

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1902

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ORIGINAL

In The
United States Court of Appeals
For The Second Circuit

MARIA IANUZZI,

Plaintiff-Appellant.

VS.

SOUTH AFRICAN MARINE CORP.,

Defendant and Third Party Plaintiff-Appellee.

VS.

INTERNATIONAL TERMINAL OPERATION CO., INC.,

Third Party Defendant-Appellee-Appellant.

JOINT APPENDIX

Volume II pp. 301a - 600a

ALEXANDER, ASH, SCHWARTZ
& COHEN

*Attorneys for Third Party
Defendant-Appellee-Appellant*
801 Second Avenue
New York, New York 10017
889-0410

PAUL A. GRITZ

Attorney for Plaintiff-Appellant
Maria Ianuzzi
185 Montague Street
Brooklyn, New York 11201
522-4241

HAIGHT, GARDNER, POOR & HAVENS

*Attorneys for Defendant and
Third Party Plaintiff-Appellee*
South African Marine Corp.
One State Street Plaza
New York, New York 10004
344-6800

(7730)

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system for the manual --

"A About 2,000 gallons.

"Q About 2,000 gallons?

"A Yes.

"Q Was the manual system for these winches separate and distinct from the remote control system?

"A Yes.

"Q What type of hydraulic fluid was used in the remote control system? Was that heavy or light?

A Light oil.

"Q Was it lighter than the hydraulic fluid used in the manual system?

"A Yes.

"Q And with respect to the two cargo winches that we have been discussing, did each of these cargo systems, that is, port and starboard cargo winches, did each of these winches have a separate remote control system?

"A Yes.

"Q Was each of these remote control systems separate and distinct or were they inter-connected in any way?

"A On the remote system?

"Q On the remote system.

"A They were not connected in any way.

"Q This gravity tank that you referred to as being,

1 I think you said about forty feet above the suction side
2 of the supply pump for the manual system, is that also
3 sometimes referred to as a header tank?
4

5 "A A header tank.

6 "Q While you were chief engineer aboard the South
7 African Huguenot, did you follow a practice of routine
8 maintenance with respect to these winches?
9

10 "A Yes.

11 "Q That is with respect to both systems, the manual
12 system and the remote system?
13

14 "A Yes.

15 "Q Would you describe for me what the routine
16 maintenance practice you followed was with respect to the
17 manual system?
18

19 "A Yes.

20 "Q Would you describe for me what the routine
21 maintenance practice you followed was with respect to the
22 manual system?
23

24 "A Every northbound passage, we would -- northbound
25 passage, we would free the brakes on the manual winches
and make sure that the brakes were operative. We would
check out the oil levels in the pump gear boxes. We
would insure that the electrical starting mechanisms were
in good order and the electric motors and magnetic filters

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"Pitt

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were used to clean in about six month intervals, make sure the magnetic filters were clean.

"Q Could you tell me, chief, what you mean by a magnetic filter?

"A A filter situated on the suction side of the pump for extracting any metallic particles that might be entrapped in the main hydraulic system.

"Q When you say the main hydraulic system, you are referring to what I have been calling the manual hydraulic system?

"A I'm sorry. Yes.

"Q What, if anything, was done with this gravity tank or header tank that you referred to?

"A I left instructions with my staff to pump up the header tank prior to us entering any port where winches were to be operated.

"Q Did you follow a practice aboard the South African Huquenot of pumping up this gravity or header tank before each port of call where you were to use the winches?

"A Yes.

"Q And could you tell me how the hydraulic fluid was pumped to this header tank or gravity tank?

"A It was pumped from a storage tank through a hand

operated pump to the header tank.

"Q Was this a hand operation or was it a water driven pump?

"A No, a hand operated pump.

"Q Where was the hand operated pump --

"A Next to the --

"Q -- located for pumping up this gravity or header tank?

"A Next to the storage tank.

"Q Which is located where?

"A In the pump room.

"Q And for the winches at the forward part of No. 3 hatch, this pump room, if I understand you correctly was located under the mast house or in the mast house in which the winches were located; is that correct?

"A Yes.

"Q What was your practice with respect to the maintenance of the remote system, of any?

"A Similarly, on the northbound voyage, we would prime through the remote system to insure that no -- to extract any air that might have been entrapped in the remote system. Similarly, on the brake system, the remote brake system, we primed the system through to extract any air that might have been entrapped in the remote brake

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system.

"Q Was there any lubrication done as a matter of routine maintenance on the remote control system?

"A Not on the remote control system but on the manual system, yes.

"Q What was lubricated on the manual system?

"A Bearings.

"Q How were these bearings lubricated?

"A By grease gun.

"Q You have mentioned priming through in connection with the maintenance on the remote control system.

Would you please tell me what you mean by priming through? What did you do in order to prime through the remote control system?

"A A little hand pump is attached to the control stand and this light hydraulic fluid is forced through the pipes connected with the remote system and air extraction nipples are slackened off which allows any air entrapped to be let out.

"Q And is that, in effect, pushed out by the hydraulic fluid that is being pumped in, the air, that is?

"A Yes.

"Q On the northbound voyage, when you say the northbound voyage, are you referring to after the ship sailed

merf 102

from South Africa?

"A Yes.

"Q And that would be when she was enroute from South Africa to the United States?

"A Yes.

"Q And this maintenance you were referring to was accomplished on the northbound voyage; is that correct?

"A Yes.

"Q Was it your practice to do any maintenance on the southbound voyage?

"A Not generally.

"Q Was there a reason for that?

"A Sometimes we would have -- occasionally, we would have to prime the system -- system to extract any air that might have gotten --

"Q I am referring to routine maintenance procedures, if any, on the southbound leg of the voyage.

"A No.

"Q Going from, say, the continental United States or from South America or from Mexico back to South Africa.

"A No.

"Q Was any routine maintenance performed?

"A No.

"Q On the southbound leg of the trip?

merf 103

"Pitt

305

1

2

"A No.

3

4

"Q Was there a reason why no routine maintenance was done on the southbound leg of the voyage?

5

6

"A Largely because when the vessel is around the South African coast, most of the work was done by cranes.

7

"Q And you didn't use the ship's winches?

8

"A Very seldomly.

9

10

11

12

13

14

"Q After this priming through was done on the northbound leg of the voyage in connection with your routine maintenance, was it ever necessary to do any work with these winches in connection with topping them off with hydraulic fluid or adding any more hydraulic fluid to the remote system?

15

"A Yes, on --

16

"Q Do you understand my question?

17

"A Not perfectly, no.

18

19

20

"Q If I understood you correctly, you testified that you had a routine maintenance that you followed on the northbound leg of the voyage --

21

"A Yes.

22

"Q -- while you were enroute from South Africa north?

23

"A Yes.

24

25

"Q And you mentioned that you primed through that remote control system --

1
2 "Q -- to eliminate any air in the system: is that
3 correct?

4 "A Yes.

5 "Q My question is this: Having done this routine
6 maintenance on the northbound leg of the voyage, was it
7 ever necessary at the various ports of call in the United
8 States before you left the United States to return to South
9 Africa to add any hydraulic fluid to top off these remote
10 systems, in other words to add hydraulic fluid to the remote
11 control system?

12 "A Occasionally, yes.

13 "Q And what would be the reason why it was necessary
14 to add hydraulic fluid on these occasions?

15 "A Well, on any hydraulic system onboard a ship,
16 inevitably seepage does occur through joints and through
17 this reason that air can be entrapped in the remote system
18 occasionally and this air would have to be extracted.

19 "Q Can you tell me what the effect would be of air
20 being entrapped in the remote system?

21 "A Any pocket of air would cause a cushioning
22 effect and allow any operation to become sluggish or more
23 easy. There is no positive -- (indicating) positive action
24 of any hydraulic fluid forcing one body in one direction.

25 "Q Was this a gradual process, this loss of direct

merf 105

action?

"A A gradual process, yes.

"Q And does the entrapment of air in the system make the remote system inoperative?

"A Not right away. The -- it is a gradual process.

"Q Will the remote system operate, for example, with no hydraulic fluid?

"A No.

"Q Will it operate with some hydraulic fluid?

"A Not very well.

"Q If I had a small amount of hydraulic fluid lost from the system, would the remote system operate?

"A Yes. Can I ask you if you mean if you had --"

Down to line 17:

"Q Let me ask you, chief, how was the cargo winch drum driven --

"A Direct --

"Q -- in the manual system on the hudraulic cargo winches aboard the South African Huguenot on November 24, 1968?

"A It is a direct connection between the winch motor and the winch drum."

"Q Was there any gearing between the hydraulic motor and the winch drum?

1
2 "A No.

3 "Q I believe you have just told me that in operating
4 the remote system, if you had nothing but air in the
5 system, it would not operate; is that correct?

6 "A No.

7 "Q If you had a small pocket of air in the system,
8 in the hydraulic system, and I refer now to the remote
9 system, would it operate?

10 "A To a certain extent.

11 "Q And what would be the effect of the small
12 amount of air in the system?

13 "A It would cause out-of-phase operation. That is,
14 forgetting -- forgetting some movement from the transmitter,
15 you would need to push it over slightly more to get the
16 same movement on the local system or the manual system.

17 "Q When you say out-of-phase, Mr. Pitt, are
18 you referring to a lack of synchronization between the
19 controls on the remote system and the controls on the
20 manual system?

21 "A Yes.."

22 Page 31, line 3:

23 "Q Will you explain to me what you mean by the
24 expression 'out-of-phase' that you just referred to?

25 "A There are two levers; one on the remote system

1 and one on the manual system. And this out-of-phase --

2 "Q Will you stop right there a minute, Mr. Pitt.

3 "Does the remote system, the lever on the remote
4 system control, incidentally, when the remote system is in
5 operation, does it control the lever on the manual system?
6

7 "A Yes.

8 "Q Will you go on, please?

9 "A Yes. Now, should a small amount of air be
10 entrapped in the remote system, the out-of-phase would be
11 thus: The remote lever would have to be, for example, moved
12 over about ten degrees to get about five degrees movement
13 in the same direction on the manual system (indicating)
14 and this will apply in the hoist and lowered direction.

15 "Q Are you saying that the manual system, if there
16 is a small amount of air, will not accurately follow the
17 remote system?

18 "A Yes.

19 "Q That there will be a difference in the number
20 of degrees that you would have to turn the handle on
21 the remote system to get, say, I think you used the
22 expression five degrees on the manual system you might have,
23 for example, to move the remote system handle ten degrees?
24 Is that what you mean?

25 "A Yes."

Page 33, line 24:

"Q Is this remote system in its effect on the manual system a direct transmission system?

"A Yes.

"Q Will you tell me what you understand by a direct transmission system?

"A In principle, it is a piston operating against another valve, a directional valve and piston in the remote system.

"Q All right.

"A And it is a form of displacement initially created by the traveling of a piston in the remote system. This transmits the remote oil.

"Q Is the pressure which the remote system on these winches created, the hydraulic pressure created in the remote system, does that create a hydraulic pressure on the manual system?

"A Yes.

"Q Let me take the converse. If you have no air in the remote system, it is completely full of hydraulic fluid, is it possible to operate the handles, the control handles on the remote system without also operating the handles on the manual system?

"A No. The one must move with the other. The

merf 109

manual must move with the movement of the remote handle if it is full of hydraulic fluid.

"Q Thank you. Could you tell me where the control handles on the remote system have any positions marked on the travel of the handles? Do you understand what I mean?

"A Yes. No.

"Q In other words, are they marked, 'one-quarter speed,', 'one-half speed,' 'one-third speed'?

"A No, there are no positions marked.

"Q How is the speed controlled, the speed of the winch drum controlled by the control handle on the remote system?

"A Well, the control handle on the remote system controls the handle on the manual system and the handle on the manual system operates the main hydraulic valve (indicating) which supplies oil in whichever direction the winch has to operate.

"Q Would it be an accurate statement to say that the speed of the winch is controlled by the amount of the hydraulic pressure?

"A The amount of hydraulic fluid delivered, yes.

"Q To the motor?

"A To the motor.

1 merf 110
2 "Q And the amount of the hydraulic fluid delivered
3 to the motor is determined by what?

4 "A By the amount the valve -- the control valve in
5 the manual system is opened.

6 "Q And the movement, I believe you have just told
7 us the movement of the manual valve is controlled by the
8 movement of the remote system when the remote system is in
9 operation; is that correct?

10 "A Yes.

11 "Q Are there any hoisting or lowering speeds
12 indicated on the control levers for the manual system?

13 "A No.

14 "Q All right.

15 "A Any direction; hoist and lower.

16 "Q I believe you testified a few minutes ago that
17 the port and starboard remote systems for the cargo
18 winches at the forward end of the No. 3 hatch, these two,
19 five-ton winches were completely separate systems, is that
20 correct?

21 "A The remote systems, yes.

22 "Q They are in no way dependent on each other,
23 the two systems, the port and starboard remote systems?

24 "A No.

25 "Q There are no inter-connecting lines between

1
2 "A Yes.

3 "Q I am referring now to the remote system.

4 "A The remote operation on the brake, the one --
5 the two brakes are supplied by the same --

6 "Q Let me ask you, would entrapment of air say,
7 for example, in the starboard remote control system have
8 any effect on the port remote control system?

9 "A No."

10 Page 44, line 7:

11 MR. LORY: I should preface this by saying
12 I had an opportunity to ask questions and these are the
13 questions I put to the witness on this examination:

14 "Q You mentioned, in response to Mr. Kain's questions,
15 that there were routine maintenance performed to the
16 winches. So you understand me, I will deal solely with
17 the winches at the forward end of the No. 3 hatch and the
18 pump room upon which they are situated.

19 "A Yes.

20 "Q With respect to your general, usual maintenance
21 of these winches on your northbound leg to any port,
22 was there any checklist with respect to what procedures
23 were to be followed?

24 "A No, no, they are only instructed.

25 "Q If maintenance were to be performed, by whom

1 merf 112
2 would it be performed?

3 "A By the fourth engineer.

4 "Q How long had he been aboard the Huguenot as of
5 November 24, 1968?

6 "A I don't know.

7 "Q Do you know what licenses he had?

8 "A He didn't have licenses, not the fourth.

9 "Q Did he perform the maintenance as was necessary
10 himself, or was it designated to other members of the crew?

11 "A Yes, by myself primarily and then the second
12 engineer. We checked up on this procedure.

13 "Q I don't think you understood my question.

14 "MR. LORY: Will you read it back, please.

15 "(The question was read.)

16 "A No, as by himself. Can I just clarify this,
17 please. You see, I gave -- give instructions to the fourth--
18 second engineer and the fourth engineer's duty under
19 normal circumstances is to -- to do this operation, to --

20 "Q As I understand your testimony, he would be the
21 one that would top the tanks and do everything else as
22 was necessary?

23 "A Yes, under my supervision.

24 "Q Would you be there when this was done?

25 "A I would be checking on him, certainly. Not all

the time. I would be backwards and forwards checking.

"Q Do you have any recollection of being atop the pump house, the forward end of the No. 3 hatch at the time these winches were checked on the inbound voyage to New York, the voyage that included November 24, 1968?

"A Not on that particular one, no."

To page 48, line 18:

"Q Mr. Pitt, when you refer to the manual system, are you also referring to the main system?

"A Yes.

"Q They are one and the same system?

"A They are one and the same system.

"Q It is just a different way of referring to it; is that correct?

"A It is just a different way of referring to it."

To page 51, line 10:

"Q You mentioned with respect to the remote system that there were some air extraction nipples?

"A Yes.

"Q With respect to the, for example, the port side winch at No. 3 hatch forward, how many air extraction nipples would be in the remote system?

"A Three on the winch operation remote system

and two on the brake operation remote system.

"Q With respect to the winch operation remote system, can you describe those nipples to us?

"A Yes, there is one on the phase adjustment valve and there is one each on the directional valve, by the directional valve.

"Q Are these nipples controlled by any interior valves?

"A There is a little ball valve underneath each one.

"Q And are they manually controlled with respect to air extraction or does it work automatically?

"A No, they are manually controlled.

"Q And after this system is primed, each one must be screwed down like the valve on a motorcar tire?

"A Yes.

"Q And if any one of these is not screwed down, then you have a leak within the remote system; do you not?

"A You will have a slight leak there, yes.

"Q What would be the effect of the slight leak?

"A You might draw up a bit of air through the slight leak, if you lost sufficient oil.

"Q I take it that the remote system had three such valves?

"A Three such valves, yes, for the operation of

merf 115

the winches.

"Q How was oil added to the remote system when it was required?

"A It was done by a -- (Indicating) hydraulic hand pump and supplied through the control stand supplied by it.

"Q When you say the control stand, you are referring to the post upon which the remote transmitter is attached?

"A Yes.

"Q And when you speak of the remote controls, I think you referred to them earlier as transmitters?

"A Transmitters.

"Q And there is something on the common post for the port and starboard winches?

"A Yes.

"Q Wherein you can pump in this lighter hydraulic fluid?

"A Yes.

"Q Can you describe the intake at that particular point?

"A Yes, it's --

"MR. KAIN: You are referring to the oil intake?

"MR. LORY: Oil intake on the transmitter post.

"A It's a --

1 merf 116 "Pitt 318
2 "Q You are indicating with a screwing motion a
3 finger going through a hole?

4 "A Yes, you unscrew it. It's a dip stick, combined
5 with a filling point. It's a dip stick combined with a
6 filling point.

7 "Q The dip stick is attached to the cap itself;
8 is it not?

9 "A And you take the dip stick out and connect the
10 pump hose to this hole and then pump oil down into this
11 hole.

12 "Q Would you describe the pump that is used, what
13 its general configuration or appearance may be?

14 "A It's a little pump.

15 "Q You are indicating about ten inches high?

16 "A Ten inches high and about five inches in diameter
17 with up and down -- with a plunger inside.

18 "Q There is a hose leading from that that you put
19 into the receptacle valve or the intake valve
20 or the intake pipe?

21 "A In the intake pipe which delivers it to the
22 control stand.

23 "Q In that system with the cap on sealed?

24 "A Yes, once you have put the cap on -- it isn't --
25 well, its waterproof.

1
2 "Q Is it sealed w respect to itself so that oil
3 can't be forced out through the valve?

4 "A Yes, through this dip stick.

5 "Q Does the cap have a gasket?

6 "A No. It's a face to face joint.

7 "Q Metal to metal?

8 "A Yes."

9 THE COURT: Mr. Lory, are you going to go much
10 longer or are you almost through?

11 MR. LORY: Yes, your Honor, on this one, yes.

12 THE COURT: All right, then ladies and gentlemen
13 we will take our mid-afternoon recess at this point. We
14 will be in recess for about ten minutes.

15 (Recess.)
16
17
18
19
20
21
22
23
24
25

MR. LORY: Continuing on page 55 at line 7:

"Q Of course, to put it back, it would have to be screwed down completely?

"A Yes.

"Q Is the exterior of it roughened with cross cuts?

"A Yes.

"Q Is there anything on top of this to give you greater leverage in order to turn it tight?

"A No.

"Q It's just like a regular cap on a bottle?

"A Yes.

"Q And with the edges roughened up so you do have some friction?

"A Yes, I can show it to you if you like."

If we can please, gentlemen, to page 56, line 21.

"Q Now, chief, the transmitter for both these port and starboard winches at No. 3 hatch would be the same? They were similar in construction and in style?

"A Yes.

"Q And I believe you mentioned that there was a control handle in the vertical position, and it would be in the stopped position?

"A Yes.

1
2 "Q Is the remote system, the transmitter, similar
3 to any other telegraphic device aboard the vessel in that
4 manipulation of the transmitter system will operate a
5 secondary or main system of much more substance?

6 "A Yes.

7 "Q Do you understand what I mean?

8 "A One transmits to another one where you have more
9 power supplied.

10 "Q Would it be fair to say, Mr. Pitt, that by moving
11 this handle either forward or towards you, away from
12 you or towards you, that you in this respect control the
13 speed of the main hydraulic pump?

14 "A Yes.

15 "Q And is it --

16 "A I beg your pardon. By the main hydraulic pump, you
17 mean the main hydraulic motor?

18 "Q The main hydraulic motor. Correct me if I call
19 something what it should not be called because I am not
20 that learned with respect to hydraulic winches. I am
21 groping.

22 "Is it also fair to say that we actually have two
23 separate hydraulic systems, one of great power and one of
24 less power as a telegraphic device?

25 "A Yes.

1 "Q And any leakage or infiltration of air in either
2
3 will affect the operation of that particular winch;
4 is that a fair statement?

5 "A Well, its -- we have never had in my four years
6 any change of any air coming into the main system.

7 "Only in the remote system, we did have air
8 entrapment.

9 "Q All right. With what frequency did you experience
10 air entrapment in the remote system?

11 "A Not very frequently.

12 "Q Well, would it be once every voyage or would
13 it be once every two voyages or how would you like to
14 describe it?

15 "A Once every two voyages.

16 "Q All right. And each voyage would be of what
17 duration?

18 "A About two and a half months.

19 "Q So what you are testifying to is the fact that
20 approximately, on the average, once every five months,
21 you may have had some air intake into the remote
22 system?

23 "A But -- that's right. We use to, if I may carry
24 on --"

25 Then there is some colloquy.

1 merf 121
2 Finally, the witness says, "All right."

3 Continuing the examination.

4 "Q The control lever, if we assumed a vertical
5 position, it is 360 degrees. Is there any limitation
6 on how far we may move it forward, away from us or towards
7 us?

8 "A Yes, it is limited by set screws that control
9 the amount of movement.

10 "Q And what is the ultimate limitation forward?
11 Is it about 90 degrees?

12 "A It is -- 60 degrees and 45 degrees. One moves
13 45 and the other one moves 60 degrees.

14 "Q When you say --

15 "A From the center position (indicating).

16 "Q The 45 degree would be with respect to lift or
17 would be with respect to slack off?

18 "A Both ways; to life or slack off. To hoist and
19 lower, I take it you mean.

20 "Q Perhaps we misunderstand each other, Mr. Pitt.
21 I was asking for the limitations of motion forward and
22 also towards the individual.

23 "A 45 degrees, 45 degrees.

24 "Q Yes? "

25 There is more discussion at this point.

merf 122

"Q Let's stay with the remote system. Let me phrase the question again.

"With respect to the remote system, the handle is in the vertical position. How many degrees forward may I move it?

"A 60 degrees.

"Q How many degrees towards me aft may I move it?

"A You mean --

"Q Towards me.

"A It is 45 degrees, 45 degrees.

"Q So therefore, as I understand your testimony, for hoisting or lowering --

"A Yes.

"Q -- we have a limitation of movement on the control handle on the remote system of 45 degrees?

"A According to this, it is 60 degrees and 44 degrees (indicating diagram); 60 degrees in one direction and 44 degrees in the other direction.

"Q Will you note for the record, chief, what page of the manual you are referring to?

"A Page 92. "

Which is the instruction book that we have marked here.

"Q Let me go over this again so you understand me

and we understand your testimony.

"With respect to the hoisting position, how many degrees may I move this lever?

"A On --

"MR. KAIN: On the remote system.

"MR. LORY: I am talking only about the remote system now.

"A Hoisting is towards you (indicating). That would be 60 degrees.

"Q Yes.

"A And 44 degrees in the lower position.

"Q In the lowering position?

"A Yes."

Going down to line 15 page 62.:

"Q Is it fair to say that both these transmitters are located on a common post?

"A Yes.

"Q And with the remote system, one man operates both winches?

"A Yes.

"Q Are you familiar with the terms 'Burton' and 'up and down'?

"A Yes.

"Q If both these winches are used in the married

1 fall operation with one winch acting as a burton winch
2 and one acting as an up and down winch, one man may
3 control the entire operation?
4

5 "A Yes.

6 "Q Did you ever operate these winches?

7 "A Not operate them, but test them, yes.

8 "Q How do you test them?

9 "A Well, you insure that -- are you talking about
10 the manual winches or -- "

11 Let's go to page 64, line 18:

12 "Q What tests do you use with respect to the remote
13 system?

14 "A The remote system, we insure that it -- the
15 direction given on the remote handle is exactly followed
16 by the manual handle, that the operation is duplicated
17 exactly by the receiver. The motion of the transmitter
18 is directed -- is actuated by the receiver, but that the
19 one is equal to the other. The actual fact that you are
20 having direct transmission of oil and direct action
21 (indicating).

22 "Q Are you speaking of synchronization between
23 the remote and manual system?

24 "A Yes.

25 "Q You have watched cargo operations aboard

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the Huguenot while you were aboard; have you not, sir?

"A Yes, but I don't know much about cargo operation.

"Q I am not going to ask you much, but I would like an answer to this question: During cargo operations, which control handle is used; the manual or the remote?

"A The remote.

"Q Apart from testing synchronization between the remote and the manual system, are there any other tests that you perform with respect to these winches?

"A We test the brakes and make sure that they are in proper working order.

"Q During the course of these tests, is there any weight on the fall?

"A No.

"Q Is anything done to the fall during these tests?

"A No.

"MR. KAIN: Are you referring, Mr. Lory, to the tests done by the chief engineer?

"MR. MORY: I am referring to the tests done by the witness who said he tested the winches.

"MR. KAIN: That is what I said.

"A This is on the normal course of events going northbound. We make sure that there is direct operation -- direct following of -- (indicating).

1
2 "Q In other words, you are checking the coupling
3 between the remote system and the manual system?

4 "A To see that they are synchronized, yes.

5 "Q I don't recall if I asked you this but I will
6 risk asking the question again.

7 "Was this test performed during the northbound
8 voyage for the voyage that included November 24, 1968?

9 "A Yes.

10 "Q I see.

11 "A It is done every northbound voyage.

12 "Q This was done by the fourth engineer?

13 "A Yes, under the supervision of myself and the
14 second engineer.

15 "Q And at the time that this was done, were yourself
16 and the second engineer present?

17 "A When these tests are carried out, yes, to make
18 sure that the -- these operations are done and then we go
19 and test all the operations to make sure that everything
20 is in order.

21 "Q How long does this test take, particularly
22 confining ourselves to the forward winches at No. 3 hatch?
23 How long would it take to test those?

24 "A Ten minutes.

25 "Q Is any part of that time consumed in allowing

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"Pitt

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the pump to function and to circulate the oil?

"A No --

"Q You don't have to warm up these winches?

"A In cold weather you have to --

"Q How about in November on a north crossing?

Do you have to warm them up --

"A No, we --

"Q -- to get the oil circulating within the systems?

"A We keep the oil circulating in the systems.

We keep a pump going all night.

"Q During this ten minute test, what did you do;
just move the handle back and forth?

"A Yes, we disconnect the hooked forked arm on the
action handle and insure that we are getting correct response
between the transmitter and the receiver.

"Q Would it be fair to say that you stand at the
transmitter and watch the manual handle, and as you move
one, you want to see movement on the other?

"A Yes.

"Q Is that the full extent of the tests?

"A No, and then the brake -- braking system.

"Q How do you check the braking system?

"A To make sure that the full force of the brake
as supplied on the remote stand is delivered on the manual

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"Pitt

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stand.

"Q Are we talking about the automatic brake or the foot brake?

"A Yes. We make sure the foot brake is -- is in correct response with the automatic brake at the remote stand or the remote brake. There is no automatic brake. It is a remote brake.

"Q Did you not tell Mr. Kain that you had an automatic brake at the time that you moved the handle to the neutral position?

"A You are talking about the operation of the winch. There is a neutral coming back. This has nothing to do with the brake.

"Q How do you test the manual brake on the post?

"A We apply pressure at the post.

"Q Yes?

"A And follow up the counterpressure as delivered there to insure that the full force is applied that you would supply over here. In other words --

"Q You are indicating over to the side. Are you indicating with respect to the --

"A Winch.

"Q With respect to the manual winch?

"A Yes.

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"Q The manual system?

"A Yes, the manual system.

"Q Is there a foot brake pedal over there as well?

"A Yes, there is only one brake band and that is on the winch.

"Q What do you observe; the brake band?

"A Yes -- no, we observe the actual foot brake itself and insure that the force supplied there is also supplied at the winch itself.

"Q How many men are necessary in order to test the brakes?

"A At least two.

"Q And where are they stationed?

"A The brake is on the winch.

"Q No, where are the men stationed?

"A The one man is at the remote stand and the other man is at the winch itself.

"Q We had an off the record discussion. Would it be fair to say that when pressure is applied to the brake pedal on the remote stand, the other gentleman and the manual winch is there to feel or counteract the pressure?

"A Yes.

"Q What does he feel the pressure on at the manual winch?

1 "A He feels the exact pressure the other man has
2
3 supplied there.

4 "Q What does he have his hand on?

5 "A He holds the pedal up and --

6 "A Is there a pedal also at the manual winch?

7 "A Yes, there is two pedals; one at the remote
8 stand and the one at the manual stand, the manual winch."

9 Drop down to line 19, please, on that page.

10 "Q Is there any means of checking the pressure
11 in the remote system?

12 "A Not on the light oil side, no.

13 "Q Do I take it or do I understand your answer
14 correctly to mean that there is no gauge to read to check
15 the remote system as far as pressure is concerned?

16 "A I better explain the remote system a bit more
17 fully. The remote system -- on the light oil side is two
18 distinct operations between the port and starboard.
19 The remote system, to actually do the work, it's like the
20 power steering of a motorcar. You have an hydraulic
21 pressure of 20 kilograms of square centimeters doing
22 the work for you and this is supplied by another little
23 pump in the mast house.

24 "Q Is there any way of reading the pressure on
25 the remote system during its operation?

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"Pitt

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"A Yes, on the working meter.

"Q There is a working meter?

"A Yes.

"Q Where is the working meter located?

"A That is in the pump room.

"Q And that is some distance away from the operator
at the post?

"A Yes, that is a distance."

Page 79, please. Line 6:

"Q How much hydraulic fluid was in one of these
remote systems at the forward end of the No. 3 hatch?

"A About three quarts.

"Q And this pump that you referred to in answer to
Mr. Lory's questions for topping off the remote system,
this hand pump that you referred to, where was that
normally kept on board the ship while cargo operations
were in progress?

"A Normally kept on top of the engine room.

"Q The upper engine room?

"A The upper engine room."

Page 80, line 25:

"Q Is there a coupling between the remote system
and the manual system?

"A Not a mechanical coupling.

1 "Q That is what I meant.

2 "A There is no mechanical coupling between the two
3 levers of the remote system.

4 "Q Is that a direct system, the remote system?

5 "A The remote --

6 "Q Does it operate directly on the manual system?

7 "A Yes.

8 "Q Is it in effect a hydraulic transmitter and a
9 hydraulic receiver?

10 "A Yes."

11 That concludes my reading of the deposition, your
12 Honor.

13 THE COURT: All right.

14 Gentlemen, in accordance with our robing room
15 discussion, you are reserving your right to read such
16 or portions and you may duplicate to the extent necessary
17 to put your portions in context.

18 MR. LORY: I am wondering whether, since I am
19 going at this thing haphazardly with respect to the
20 presentation, whether to continue with Mr. Scotto at
21 this particular point and have Mr. Ferenczy testify all at
22 once.

23 THE COURT: Well, why don't we take Mr. Scotto?
24 Perhaps we can complete today and we have already had
25

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with him, unless you feel you can complete --

MR.KAIN: May I ask your Honor how long your Honor anticipates continuing?

THE COURT: Not beyond a quarter of 5:00. I have a motion that I must hear. It is scheduled for 4:30 but I can go as late as a quarter of 5:00.

MR. KAIN: I would assume, if there is no objection to it, that since this is an expert witness, that his testimony would be relatively brief. Of course, Mr. Lory is free to do what he wishes with his case but I wonder, having laid all this foundation, that we are not breaking it up unnecessarily.

THE COURT: Do you think he could be completed in 45 minutes?

MR. LORY: I don't think so, your Honor, because I would like Mr. Ferenczy to explain to the jury generally how this system works and then confine ourselves to a particular aspect of it. This is my intent.

THE COURT: Well, you suit yourself, Mr. Lory. This is your case. Go ahead.

MR. LORY: Would you call Mr. Scotto, please.

F R A N K S C O T T O, resumed the stand and testified further as follows:

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DIRECT EXAMINATION

BY MR. LORY (Continued):

Q Mr. Scotto, when last you were on the stand, I believe we got to the point in your direct testimony where you were about to tell us what you saw occur as the car was being brought aboard just before the accident to Mr. Iannuzzi.

A Yes?

Q Now, to refresh the jury's recollection, how many cars had been brought aboard before the accident to Mr. Iannuzzi?

A I believe that there were three.

Q Were you told by Mr. Iannuzzi or anyone to bring another car aboard?

A No, the hatch boss said tell the winch man to bring another one aboard, and the winch man told it to me.

Q Now, at the time that you received the order from the winch man to bring the car aboard, did you have occasion to look down at the dock?

A Yes, I was watching the pier and I was watching the car.

Q Was there a car on the stringpiece of the pier next to the vessel ready to be brought aboard or that

1 the longshoremen were getting ready to bring aboard?

2 A It was already there to be brought aboard.

3 Q Was that car brought aboard? Did you signal
4 to have it raised?

5 A Yes.

6 Q Now, at this particular time, was there dead
7 cargo on the starboard forward section of the inshore deck
8 of this vessel?

9 A There were drums and there was a tractor.

10 Q Do you remember how high off the deck the tractor
11 stood?

12 A How do I know? Who can remember that? I know
13 that the tractor is a big one.

14 Q Was it taller than you are?

15 A Yes.

16 Q Will you stand up for a moment, please.

17 How tall are you, Mr. Scotto?

18 A Five foot four, five foot or better.

19 Q Tell us please, Mr. Scotto, what you observed
20 from the moment that you gave the signal to Mr. Coppola
21 to raise that car up from the stringpiece?

22 A When I gave the order to Mr. Coppola to pick
23 up the car, he raised it, up until it reached the height
24 that it could be brought over to the hatch on the vessel,
25 and I was watching the car. When he got hold of the

1 merf 136
2 car to bring it in, the car made running inside movement,
3 and I turned around to take some shelter, and I saw Mr.
4 Iannuzzi on the coaming and I yelled, but it was too late.
5 That's all I saw.

6 Q Did you see what happened to Mr. Iannuzzi?

7 A After that I didn't see him any more. He went
8 down.

9 Q Where was Mr. Iannuzzi when you last saw him,
10 was he on the main deck of the vessel?

11 A No. No.

12 Q Where was he when you last saw Mr. Iannuzzi?

13 A I saw him pass around there. He was a foreman,
14 an assistant foreman, he would go from one hatch to the
15 other, hatch No. 1, hatch No. 2, hatch No. 3.

16 Q Mr. Scotto, you just told us that you saw
17 Mr. Iannuzzi at the time that you described that the
18 draft or this car was running -- made a running inside
19 movement, is that so?

20 A Yes, I saw him.

21 Q Now, at this particular time where was Mr.
22 Iannuzzi, was he on the main deck?

23 THE COURT: Mr. Lory, he said he was on the coaming.

24 MR. KAIN: I object.

25 THE COURT: And let's go from there.

1 merf 137
2 Q The coaming, where is the coaming of the hatch?

3 A It's the coaming of the hatch, where should it
4 be? The coaming, that's where it is. The hatch was No.
5 3, the coaming is the coaming.

6 Q Was this the coaming on the main deck?

7 A Yes.

8 MR. COHEN: If your Honor please, I think there
9 is a lot of leading going on.

10 THE COURT: I don't think there is much dispute
11 about this particular fact at this point, certainly not
12 with this witness' testimony.

13 THE WITNESS: Yes.

14 THE COURT: Go ahead, let's go forward.

15 Q All right, now, Mr. Scotto, is there a rating
16 system with respect to longshoremen and their seniority?

17 A We have a gang. I don't know what you mean.
18 There is a gang of 18 men, whatever they are.

19 Q Mr. Scotto, is there a seniority system with
20 respect to longshoremen, or do longshoremen have a seniority
21 system?

22 A I don't know what you are talking about. I
23 don't understand that.

24 MR. LORY: Mr. Amarante, would you put the
25 question to him with respect to the longshoremen but with

respect to the gang?

THE WITNESS: I was the man that -- I was the man at the gangway. I don't understand any other terms that you are using now.

Q Mr. Scotto, how long have you been a longshoreman?

A 27 years.

Q What kind of a card do you have?

A A.

Q Does that A indicate seniority?

A That's the first, yes.

Q Does that indicate that you have seniority over other longshoremen?

A Yes, sir.

Q And if someone has a B card he has less seniority than you have, is that correct?

A He comes after me.

Q What is the lowest rating in the seniority system, what letter?

A There is no letter, it is only classified as the last one who comes into the port. That's the new system. '69.

Q Now, Mr. Scotto, before the accident happened to Mr. Iannuzzi -- strike that.

Do you remember whether the day of the accident

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was the first day you worked aboard the Huguenot or that you worked quarters any other day?

A I believe that we worked aboard her another day, I believe so.

A Another day, yes.

Q Now, were you working at the No. 3 hatch forward winches this other day?

A I don't remember. whether we were at hatch No. 3 or hatch No. 4. I don't remember. All this time, who can remember any more.

Q Did you work all day on the day of the accident on No. 3 hatch?

A Yes, sir.

Q At any time did Mr. Coppola indicate to you that he had a problem with the winches at No. 3 hatch?

MR. COHEN: Objection, your Honor.

THE COURT: I sustain the objection.

Q Did you receive any complaints --

MR. COHEN: Same objection.

THE COURT: Let him finish the question.

MR. COHEN: Sorry.

Q Did you receive any complaints from Mr. Coppola with respect to the winches at No. 3 hatch on November 24, 1968?

1 THE COURT: Sustain the objection.

2 Q Did you have any problems with the winches at
3 No. 3 hatch on this day?

4 MR. COHEN: You mean to his personal knowledge?

5 THE COURT: Yes. If he knows.

6 A I don't know anything about winches. I wasn't
7 at the winches.

8 Q Mr. Scotto, assume for the moment that a winch
9 man experiences some problem with a winch, what is the
10 usual procedure in your gang?

11 MR. COHEN: Objection.

12 Q What is done?

13 THE COURT: What's the basis of that? We have
14 had some testimony about this before. It's repetitious,
15 frankly.

16 MR. COHEN: That's it. We have had testimony
17 about what was done by the winch operator.

18 MR. KAIN: I object to it too, your Honor, if
19 it is not confined to this particular ship and particular
20 day. What is done now is irrelevant.

21 MR. LORY: I don't remember at this point
22 with this witness whether I covered the possibility of ear-
23 lier complaints.

24 THE COURT: You did. My notes show that.

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MR. LORY: I did, your Honor.

THE COURT: My notes indicate that.

MR. LORY: I wanted to make sure.

Q Mr. Scotto, at the time that this last car was being brought aboard the vessel, how much of an area remained on the deck for you to go from the rail or to perform your duties?

A There were drums on deck there, there was a space maybe about 12, 13 feet. From the railing of the vessel to the coaming.

Q When you say the coaming, you mean from the bulwark, the rail of the vessel to the coaming of the hatch?

A Yes, sir.

Q The 12 or 13 feet you mentioned was that the distance from the rail to the coaming of the hatch?

A Yes, sir.

Q How much room did you have going forward and aft in that area?

A How do I know now how much space there was. The hatch is 40 feet. I was almost in the middle of the hatch, about 20 feet. You mean from one --

THE COURT: No question pending.

Q Mr. Scotto, when this car came aboard, the one that was involved in the accident with Mr. Iannuzzi, did

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Scotto-direct

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it have a tag line on it?

A There was one.

Q What is done with this tag line as it comes up, as cargo is brought aboard?

MR. KAIN: If your Honor please, I object to the form of the question, the question is what was done; what is done or what is the usual practice I submit, your Honor, is irrelevant.

THE COURT: Mr. Lory, could you confine that to this particular list?

Q What was done with respect to the tag line that was on this draft, this car, as it was being brought aboard just before the accident to Mr. Iannuzzi?

A A person holds the heaving line so that the car doesn't turn.

Q This person that you just mentioned, where is he?

THE COURT: No, no, please.

Mr. Scotto, on the car that came up, just before the accident to Mr. Iannuzzi, what did you do, if anything, with this tag line?

THE WITNESS: The tag line, which is down on the stringpiece of the dock, when it is secured to the car, and then when the car passes over, I grab it and hold it so that the car doesn't turn. May I say anything further,

1 merf 143

Scotto-direct

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2 your Honor?

3 THE COURT: Did he do that with regard to this
4 particular car?

5 THE WITNESS: When the accident happened?

6 THE COURT: Yes, sir.

7 THE WITNESS: Yes, sir, but the car was running
8 too much and I couldn't hold it, and I went down to the
9 deck floor. That's the way it happened.

10 Q One more question, please, Mr. Scotto, I believe
11 you told us that someone from the ship came earlier to
12 service the winch about 11:30?

13 A Yes, it certainly is true. I called him. When
14 Coppola tells me that he has trouble, I call the officer.

15 Q How many times that day did you call someone?

16 A Three times.

17 Q How many men came each time?

18 A One at a time. I don't know what they are,
19 they are Japanese, South Africans.

20 Q So the record is clear, Mr. Scotto, on each occasion
21 that someone was called to do something with these winches,
22 is it your testimony that one man came at each time and
23 only one man?

24 A One person is enough to do that job.

25 MR. LORY: Thank you, Mr. Scotto.

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Scotto-direct

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THE COURT: Mr. Kain.

CROSS EXAMINATION

BY MR. KAIN:

Q At the time of this accident, Mr. Scotto, how many deck men did you have aboard the Huguenot at hatch No. 3?

A There was Coppola and Frank Scotto, myself.

Q And when you started work that morning, how many deck men did you have in that gang?

A You mean to rig up the ship, to rig up the booms, there were three, all three of us.

Q Where was the third deck man at the time this accident happened, do you know?

A He was on relief.

Q If you know, was he still aboard the ship?

A I don't know.

Q In any event you didn't see him around the deck at the time of that accident, is that correct?

A No.

Q At the time of Mr. Scotto's accident -- I'm sorry, Mr. Iannuzzi's accident -- where were you standing?

A I was working at the gangway.

Q And were you over next to the ship's rail, the bulwark?

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A Yes.

Q And where were you, about half-way down the hatch?

A Half-way, a little bit more here, a little bit more there, now, what do I know.

Q As you worked the gangway, were you facing aft or were you facing forward?

A Going towards the dock.

Q You were looking out on to the dock and facing the dock?

A On the dock, yes.

Q And you had your back to Mr. Coppola, is that correct?

A Yes, sir.

Q And as you signalled to Mr. Coppola, you used hand signals, is that correct?

A Yes, sir.

Q Now, as this car was brought on board, did you continue to face the dock?

A I continued until the car was raised up over the rail to see that everything with the car was in order.

Q And at what point as this car was raised did you take hold of this tag line that you described for Mr. Lory?

A When the car started to come in, the car made a sudden run.

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Scotto-cross

347-A

Q My question is, Mr. Scotto, if you recall, at what point did you take hold of this tag line, or did you take hold of the tag the tag line?

A I didn't. I didn't grab the tag line in my hands.

Q You never got hold of this tag line, is that your testimony?

A When the cars come aboard, yes, always, but on this occasion, no, because the car was running too fast. I went down. I went down flat to protect myself.

Q Well, Mr. Scotto, as this car passed over the ship's rail, this car that was on the cargo hook, were you forward of that car or were you aft of it, where you were standing, as the car went over the ship's rail?

A The car passed almost right next to me.

Q Did it pass aft of you towards the stern of the ship or did it pass ahead of you towards the bow of the ship?

A The forward part.

Q The car was forward of you?

A Yes, very, very short distance.

Q And you weren't standing under this car as it came over, were you?

A A little bit, yes.

Q Based on your experience that good longshore

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Scotto-cross

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1 practice for a gangway man to stand under the draft as it
2 comes aboard?

3
4 A Because I couldn't move. There were drums there
5 and I couldn't move any further back.

6 Q Could you move further forward?

7 A And the car would go more under.

8 MR. COHEN: I'm sorry.

9 A The car would go more under. Those are the exact
10 words.

11 Q It is your recollection now that you were about half-
12 way down the hatch at the time this car came aboard?

13 A Yes, sir.

14 Q Now, Mr. Scotto, do you remember testifying in
15 this courthouse on October 14, 1971 at a deposition which
16 Mr. Lory and I attended and another lawyer, a Mr. Baxter?

17 A I don't remember anything.

18 MR. KAIN: Is it conceded, Mr. Lory, that he
19 so testified?

20 MR. LORY: I attended a deposition at which he
21 was present.

22 THE COURT: The answer is yes?

23 Q Mr. Scotto, do you on the occasion of this
24 deposition that was taken from you on October 14, 1971,
25 page 20, do you recall being asked this question, line 11:

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2 Is it signed?

3 MR. KAIN: Your Honor, I believe, has the original.
4 I'm sorry, Mr. Amarante has the original.

5 MR. LORY: It was certified.

6 MR. COHEN: Signing waived. Certified by the
7 court reporter.

8 THE COURT: You may put it in under the
9 certification.

10 BY MR. KAIN:

11 Q Do you remember how long a period of time elapsed,
12 Mr. Scotto, from the time you were told to bring another
13 car aboard until the car was actually passed over the deck
14 immediately before the accident?

15 A No, I don't remember anything.

16 Q When this car came aboard, did it pass over
17 this tractor that you say was stored on deck or stowed
18 on deck on the inshore side?

19 A What tractor?

20 Q Was there a tractor on deck on the inshore side?

21 A Are you talking about a machine?

22 Q Talking about a tractor.

23 A Yes, there was a tractor. There was one.

24 Q And how high above the deck was this tractor
25 that was on deck?

1 A As I told you before, about my height.

2 Q At your deposition on October 14th, Mr. Scotto,
3 do you remember being asked this question and -- I am sorry,
4 do you remember being asked this question, page 18, line 9:

5 "A At the time he started to Burton the car across
6 the deck how high above the ship's rail was the car," and
7 did you give this answer?

8 "A I tell you now what the height is because there
9 was a heavy tractor there which was forward and if the
10 car would be brought in at a lower height, the end, rear
11 end of the car would strike against the tractor and that's
12 the reason that he brought the car in somewhat higher
13 but this is not the reason that this happened."

14 Were you asked that question and did you give that
15 answer?

16 A The car was brought in the way it was brought
17 in because it was a very large car, but then that's
18 the way he did it, however he did it. I wasn't at the
19 winch.

20 Q Were you asked this question, line 20:

21 "Q How high above the ship's rail did he bring it?
22 How high was it above the ship's rail?"

23 And did you give this answer:

24 "A How can I tell you? I didn't measure it."
25

And were you asked this question:

"Q Well, could you estimate it for me, was it five feet, ten feet above the ship's rail?"

And did you give this answer:

"A About 15 or 20 feet."

Does that refresh your recollection?

A This question I answered hat way because from the floor of the dock that is the height, about 15 feet.

Q Page 19, line 2, do you remember being asked this question:

"Q And if you recall, how high above the ship's rail was this tractor that you referred to, the top of the tractor?"

And did you give this answer:

"A About 12 or 13 feet."

Were you asked that question and did you give that answer?

A No, I don't remember anything.

THE COURT: Mr. Kain, I take it it is our understanding that as to all of these questions, they are going into evidence?

MR. KAIN: I was going to ask your Honor if I could offer them in evidence.

THE COURT: You may.

MR. KAIN: As certified answers.

THE COURT: Mr. Lory, you have no questions this is a certified transcript, do you?

MR. LORY: I don't question that, your Honor. The only thing I said was I was not the reporter. I assume the transcript is correct. The question was asked, I presumed that answer was given as recorded.

THE COURT: I appreciate that. All right.

Q Now I think you told Mr. Lory just a minute ago that on the day of this accident, Mr. Coppola complained to you about these winches on three occasions, is that correct?

A Yes, sir.

Q And did he tell you what the nature of his complaint was?

A That the winch wasn't working properly.

Q Is that all he said, did he tell you what difficulty he was having in operating these winches?

A That's all he said, they are not working right.

Q And you say he did this on three occasions?

A Three times that day, yes, sir.

Q Mr. Scotto, do you remember at your deposition on October 14, 1971, page 31, line 24, do you remember being asked this question:

1 "Q Did you have any reports from either Mr. Coppola
2 or Mr. Manfredino about these winches, complaints about
3 these winches at any time of the day of the accident
4 prior to the accident?"

5 And did you give this answer?

6 "A At 11:15, sometime like that, he called me and he
7 said, Frankly, the levers are stiff."

8 Were you asked that question and did you give
9 that answer?

10 A Yes, sir.

11 Q Does that refresh your recollection now that you
12 got one complaint from the winch operator?

13 A This was at 11:30 and this time, but that
14 day there were five different times.

15 THE COURT: Mr. Kain, I take it you are going
16 to be a little bit longer with this witness?

17 MR. KAIN: Yes, sir, a considerable bit, I
18 think.

19 THE COURT: It is almost a quarter to five and
20 I have a motion here with counsel from Washington. I
21 will recess until tomorrow morning at 10:00.

22 Ladies and gentlemen, you are excused until
23 10:00 tomorrow morning. Please do not discuss the case
24 among each other nor with anybody else in accordance
25

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with my standing instructions.

Good night.

Now, Mr. Kain, would you like to have your associates put that exhibit in my robing room.

MR. KAIN: I'd like to, your Honor.

THE COURT: In its present pristine condition, and you can leave it there overnight.

MR. COHEN: I have a witness under subpoena. Could I ask your Honor to instruct him to bring him back -- I don't think we will reach him tomorrow. Will you please tell him instead of me?

THE COURT: I will be glad to do it.

If you can bring him out I will give him the direction.

You are instructed to return at 10:00 o'clock tomorrow morning, Joseph Andre.

You may step down, Mr. Scotto. See you in the morning.

(Witness excused.)

(Adjourned to May 22, 1974 at 10:00 a.m.)

Maria Iannuzzi

vs.

68 Civ. 2829

South American Marine Corp.

vs.

International Terminal

Operating Company, Inc.

May 22, 1974

10:00 a.m.

(Trial resumed.)

(In the robing room.)

MR. LORY: Your Honor, earlier -- I would say about a week, ten days ago I had asked Mr. Cohen to get for me from ITO what an assistant foreman would be earning today had he still been employed with ITO. During the course of the trial it turned out that Mr. Iannuzzi was only hatch boss who was acting as an assistant foreman. This, of course, changed the picture with respect to my requests. At this point with respect to establishing economic loss, we know what he was earning and can show it by withholding slips what Mr. Iannuzzi was earning in 1968 and 1967.

I have brought with me today a Mr. Vincent Barone who is brother-in-law to Mr. Iannuzzi. Mr. Barone was a longshoreman at Pier 6 with a seniority rating of B, the same as Mr. Iannuzzi. What I propose to do, so the jury can have some basis to see what a longshoreman in the same situation with the same rating would be earning today, is to offer his withholding slips.

1 rgrm 2

2 MR. KAIN: May I be heard on that, your Honor?

3 THE COURT: It seems to me it is inappropriate.

4 MR. KAIN: I believe it is, too. First of all,
5 your Honor knows that a man with an A or B card, one, doesn't
6 have to work if he doesn't want to, he gets a guaranteed
7 annual wage. I think there are other ways of proving what
8 Mr. Iannuzzi earned and how many hours he worked. I assume
9 this could be projected. The question of his hourly rate is
10 certainly a matter of record. It is a matter of union
11 contract. I think it is totally irrelevant what Mr. Barone,
12 his brother-in-law, may have made, or what work he did.

13 THE COURT: Yes, I agree with you on that. I would
14 rule that out. In other words, using him as an example --

15 MR. LORY: Just as an example, because they both
16 were suggested to the same circumstances at pier closing. We
17 can show what Mr. Iannuzzi was earning at that particular time
18 and what Mr. Barone was earning.

19 THE COURT: No, I would sustain an objection to
20 that, Mr. Lory. I think the testimony has got to concern what
21 Mr. Iannuzzi's prospects were however you want to set about
22 proving that.

23 MR. LORY: Am I to understand, sir, that the only
24 way I can get prospective current earnings would be by reason
25 of the number of hours that Mr. Iannuzzi was working and

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applying to that the rate of pay, shall we say, for the year 1973 and 1974? Would that be acceptable to the Court?

THE COURT: You are asking me for a declaratory opinion here on proof that has not been offered.

MR. LORY: I am trying to find out how to proceed.

THE COURT: All I could say to you is that I would exclude evidence of what another man is making who is, I take it, of the same age and card as Mr. Iannuzzi.

MR. LORY: I am accepting that, your Honor, but I am trying to figure out another way of establishing, if I follow Mr. Kain's suggestion with respect to the hourly rate, assuming that Mr. Iannuzzi worked 500 hours during the year 1968, it would be assumed -- would the Court accept an assumption that he would also be working 500 hours in the year 1973?

MR. KAIN: I submit that he would have been decasualized.

MR. LORY: I am only using it as an example.

THE COURT: I think you put in proof of what his past experience was and his age and his life expectancy and the jury can draw inferences from that.

MR. COHEN: Beyond that it is for the jury to draw whatever inferences they want from that.

MR. KAIN: The present hourly rates are certainly

1 a matter of record, since this is a matter of union contract.
2 It is very easy for Mr. Lory to determine what the hourly
3 rate for lngshoremen was in any given year, or during any
4 particular contract period.
5

6 THE COURT: Could that be stipulated?

7 MR. KAIN: If he has the contract, then it is in the
8 contract. I am not familiar with each year, but I do know
9 now -- I believe it is 5.95 an hour. Maybe it is more for a
10 hatch boss.

11 MR. LORY: We can get it from New York Shipping.

12 MR. KAIN: No question about it.

13 THE COURT: There may be other evidence that is
14 appropriate, Mr. Lory, but what I just discussed, and Mr.
15 Cohen confirmed, I think that is the standard. There may be
16 other areas of exploration, but I do not think that the
17 brother-in-law is proper.

18 MR. LORY: The reason I came to your Honor at this
19 particular point is because I was not secure in my believe
20 that this would be valid. I do want a little time, or give
21 myself a little time to proceed in another direction in the
22 event that your Honor was of the same opinion.

23 THE COURT: All right. You have got other witnesses
24 to go now. This morning you have got Scotto and you have got
25 the widow and you have got some children.

1 rgrm 5

2 MR. LORY: Even if I rest, it would be subject to
3 getting this particular proof, because the case is going to go
4 on for a little bit yet.

5 THE COURT: Sure.

6 (In open court; jury present.)

7 THE COURT: Good morning, ladies and gentlemen.

8 All right, let us go forward.

9 F R A N K S C O T T O , resumed.

10 CROSS EXAMINATION CONTINUED

11 BY MR. KAIN (Through an Interpreter):

12 Q Mr. Scott, I think you told us yesterday, did you
13 not, that when you received a complaint from Mr. Coppola
14 about 11:30 on the morning of the day of this accident, he
15 complained to you that the winch control levers were stiff
16 and hard to move; is that correct, sir?

17 A That is true.

18 Q Did you also tell us yesterday that you didn't see
19 Mr. Iannuzzi hit by this car?

20 A I said that when I turned around when the car was
21 coming, I saw Mr. Iannuzzi on the coaming and then he went
22 down.

23 Q Did you see him hit by the car or did you just see
24 him go into the hatch?

25 A When he went down into the hatch.

Q But you didn't see the car hit him; is that correct?

A He was hit by the car.

Q I say you didn't see the car strike him, did you?

A He was hit by the car. Otherwise how else could he have gone down.

THE COURT: Strike the answer.

Mr. Scotto, did you see it with your own eyes?

THE WITNESS: Yes, sir.

Q You did see the car strike him; is that your testimony?

A Yes, sir.

Q Mr. Scotto, let me refer again to your testimony taken in this courthouse under oath on October 14, 1971.

Page 22.

MR. KAIN: Would your Honor excuse me a minute?

THE COURT: Surely.

(Pause)

Q Do you recall being asked this question:

"Q Did it strike Mr. Iannuzzi, do you know?"

And did you give this answer:

"A I didn't see him being hit by the car, but I saw him when he went over in a tumbling motion."

Do you recall being asked that question and giving

1 rgrm 7

2 that answer?

3 A No, that I don't remember.

4 Q Page 33, line 17.

5 Do you recall being asked this question:

6 "Q Well, did you see the car strike Mr. Iannuzzi?"

7 And Mr. Lory interposes there the question has
8 been asked and answered.

9 And did you give this answer:

10 "A No."

11 Q Does that refresh your recollection?

12 A No.

13 THE COURT: Does he remember giving that question
14 and answer?

15 THE WITNESS: No, sir.

16 Q Do you recall being asked this question, at line 21:

17 "Q Do you have any personal knowledge as to
18 whether the car did strike Mr. Iannuzzi?"

19 And did you give this answer:

20 "A In my opinion the car hit him, but I didn't
21 see it. I only saw him go down the hatch."

22 A No, I don't remember that.

23 Q After this accident, did you give signals as the
24 gangwayman to Mr. Coppola when he put this car back on the
25 dock?

A No.

Q Did anybody, do you know?

A I do not know.

Q Were you aboard the ship when the car was put back on the dock?

A I left.

Q Did you leave before the car was put back on the dock?

A Yes, sir.

Q Where did you go, Mr. Scotto?

A To the office.

Q Did you come back aboard the ship at all that day?

A No.

Q Then I take it you weren't present when Mr. Iannuzzi was removed from the hatch or when he was taken from the pier by ambulance; is that correct?

A No.

Q Now, Mr. Scotto, are you now being represented or have you in the past been represented by Mr. Gritz as your attorney?

A I don't understand your question.

Q Does Mr. Gritz of Mr. Lory's office, do they represent you presently in any cases, or have they in the past represented you in any cases?

A You mean for me?

Q You. You, yourself.

A Yes, sir.

MR. KAIN: I have no further questions at this time.

If your Honor please, may I at this time, in view of the witness' statements, offer his deposition in evidence, the one that we just used in the cross examination.

THE COURT: To the extent that you used it you may.

MR. COHEN: May we have the record indicate that at the time of that deposition Mr. Amarante was acting as the interpreter then as he is now.

THE COURT: I take it there is no question the deposition so states; is that right, Mr. Lory?

MR. LORY: It so states, your Honor.

THE COURT: And you were there?

MR. LORY: Yes, your Honor.

THE COURT: The record may so show.

CROSS EXAMINATION

BY MR. COHEN:

Q Mr. Scotto, do you see this model over here of a ship's boom and winches?

A Yes, sir.

Q We have been using this model to portray the forward set of booms and winches at the number 3 hatch of the Huguenot.

1 This area in here represents the hatch square, do
2 you understand that?
3

4 A Yes.

5 Q If this is the forward end here, the vehicle was
6 tied up with the starboard side to the pier, over here you
7 would have the pier; do you understand that?

8 A I don't know how the vehicle was. Was it fore or
9 was the aft as to the mooring.

10 Q The testimony has been that the pier was to the
11 starboard side. Do you accept that?

12 A Yes, sir.

13 Q That would mean, then, that you as the gangwayman
14 would have to position yourself on the starboard side of the
15 hatch in order to do your signaling; is that correct?

16 A Yes, sir.

17 Q As the signalman it was your job to watch a draft
18 of cargo as it comes up from the pier and to give signals to
19 the winch operator with your hands as that draft is coming up
20 from the pier; is that correct?

21 A Yes, sir.

22 Q Once the draft reaches the height of the ship's
23 rail so that the winchmen can see it, he no longer takes any
24 signals from you; is that correct?

25 A No.

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2 Q After the winchman can see the draft when it is over
3 the ship's rail, do you still give him signals?

4 THE WITNESS: (In English) No.

5 THE INTERPRETER: Would you mind repeating the
6 question, Mr. Cohen, please.

7 Q When the draft has come up from the dock and is now
8 at a height above the ship's rail so that the winchmen can
9 see it, do you still give him signals?

10 THE WITNESS: (In English) No.

11 A No, he does everything.

12 Q In order for you to be in a position to see the
13 draft as it is coming up from the dock, it is necessary for
14 you to position yourself over near the ship's rail; is that
15 correct?

16 A That's right.

17 Q You stayed by the ship's rail looking over the rail
18 and watching the draft as it is coming up from the dock; is
19 that correct?

20 A That's right.

21 Q On this particular ship on the day we have been
22 talking about, there was a quantity of deck cargo stowed on
23 the inshore side of the number 3 hatch on the main deck, was
24 there not?

25 A Yes, sir.

1 rgrm 12

2 Q Some of that cargo consisted of drums; is that
3 right?

4 A Yes, sir.

5 Q What was in the drums, do you know?

6 A I do not know.

7 Q About how high was each drum?

8 A Who knows how high they are. It is a drum.

9 Q Well, can you tell us whether it was the size of a
10 55 gallon oil drum or a smaller drum or a larger drum?

11 A They are just drums, the drums that we always load.

12 Q Well, these drums that you always load, can you
13 show us approximately how high they are?

14 A They are about so high (indicating).

15 Q Indicating about chest high?

16 A Yes.

17 Q These drums that were stowed on the deck, were they
18 stowed one on top of the other or was it just one tier high?

19 A One tier high.

20 Q The deck was covered with those drums, was it not?

21 A Yes, sir.

22 Q In addition to the drums, you had some tractors
23 stowed on the deck; is that correct?

24 A Only one.

25 Q Only one.

2 Now, I think you said yesterday that you had
3 positioned yourself near the rail at a point that would be
4 abreast of the center of the hatch opening; is that right?

5 A Yes, sir.

6 Q You said that you couldn't move any further aft
7 because you had that deck cargo of drums behind you there;
8 is that correct?

9 A Yes.

10 Q And the drums were also stowed on the deck between
11 where you were standing and the coaming of the hatch; is that
12 correct?

13 A Yes. There was about two feet away from the
14 coaming of the hatch. There was just a little bit of space
15 there.

16 Q In other words, what you are saying is that there
17 was some clear space within two feet of the rail of the ship,
18 and it was in that space that you were standing and doing
19 your work; is that correct?

20 A There is about a foot and a half of space there and
21 then you have those metal bars that are on the ship and I
22 couldn't pass through there.

23 Q Wait a minute, let me take this one step at a time,
24 please.

25 Approximately how wide was the deck area on the

1 rgrm 14

2 starboard or inshore side of the Huguenot adjacent to the
3 number 3 hatch?

4 A A foot and a half.

5 Q No, the entire deck from the railing of the ship to
6 the coaming of the hatch was approximately how wide?

7 A 13 or 14 feet.

8 Q Starting at the railing of the ship and coming
9 inboard for approximately a foot and a half there was clear
10 space in which you were able to stand and do your work; is
11 that right?

12 A Yes.

13 Q Was there also some clear space alongside the
14 coaming of the hatch so that men could pass back and forth
15 along that?

16 A Yes, sir.

17 Q Approximately how wide was the space next to the
18 hatch coaming that men could pass back and forth?

19 A Two feet.

20 Q Aside from that two foot strip next to the hatch
21 coaming and the one and a half foot strip next to the railing,
22 the rest of the deck area was covered with this cargo; is
23 that correct?

24 A Yes, sir.

25 Q You remember that you were asked yesterday some

1 questions about the tag line, do you recall that?

2 A Yes, sir.

3 Q When you are standing at the rail looking at the
4 draft coming up, one of the things that you are looking for
5 is that tag line; is that right, because it is your job to
6 grab ahold of it as soon as you can?

7 A Yes, sir.

8 Q Is it fair to say, then, that as that draft, that
9 particular car in question was coming up from the dock, you
10 were standing at the rail looking down at the dock keeping
11 your eye on the car and looking at the tag line getting ready
12 to grab ahold of the tag line?

13 A That's true.

14 Q You said yesterday in answer to one of Mr. Kain's
15 questions that you were never able to grab the tag line; is
16 that right?

17 A That's right.

18 Q And you said you were never able to grab the tag
19 line because as the draft reached the height above the rail,
20 it suddenly starting sweeping inboard rapidly; is that correct?

21 A Yes, sir.

22 Q As soon as it started that rapid movement inboard,
23 didn't you drop down to the deck to take cover?

24 A Yes, sir.

1 rgrm 16
2 Q When you dropped down to the deck to take cover,
3 you dropped down to the deck in that area where you were
4 working between the ship's rail and the cargo of drums and
5 tractor that were stowed there; is that right?

6 A Yes, sir.

7 Q That was in a space that was about a foot and a half
8 wide; is that correct?

9 A Yes, sir.

10 Q When you were dropped down to the deck in that space
11 a foot and a half wide surrounded on one side by the railing
12 of the ship and on the other side by this deck cargo of drums
13 that was chest high and a tractor that was several feet high,
14 you weren't able to see anything that was going on at the
15 hatch square, were you?

16 A I could see because I bent down, went down to the
17 deck and then I turned around.

18 Q You said you bent down and went down to the deck;
19 is that right?

20 A I just bent down this way (indicating).

21 Q Indicating what?

22 A Like this (indicating).

23 Q Like what? Could you stand up, please, and show us.

24 A (Indicating)

25 Q I see.

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2 MR. LORY: Let the record indicate that he shows a
3 squatting action.

4 THE COURT: It may.

5 Q Mr. Scotto, before taking the stand in this court-
6 room, did you meet with anybody to discuss the case or your
7 testimony?

8 A No.

9 Q Who told you when to come to court?

10 A The first time I got a subpoena.

11 Q Who gave you the subpoena?

12 A I don't know. The first time someone brought it
13 over.

14 Q Did you go up to Mr. Gritz' office to discuss the
15 case?

16 A No. I called him up and I said, "I got a letter
17 here that I have to go to court," and he said, "Go to court."

18 Q Who did the letter come from?

19 A It was a subpoena. I don't know.

20 Q Do you have the subpoena with you?

21 A I only have the one of today.

22 Q Do you have it with you?

23 A Let's see if I still have it.

24 I think this is it.

25 Q This is a subpoena from Mr. Gritz, is it not?

1 rgrm 18

Scotto-cross

2 A This one now, but the other one, no.

3 Q What lawyer's office was the other subpoena from?

4 A It was sent to me by the Court, the law, I don't
5 know who it was from.

6 Q Before Mr. Lory put you on the stand, did you ever
7 discuss the case with him?

8 A No.

9 Q You mean you had no idea what questions he was going
10 to ask you about?

11 A You are talking about this morning?

12 Q No. I am talking about before you first took the
13 stand in this case.

14 A No.

15 Q Do you remember testifying in this courthouse on
16 a deposition back on October 14 of 1971?

17 A No, I don't remember.

18 Q You don't remember coming to this courthouse and
19 giving testimony about this case less than three years ago?

20 THE WITNESS: (In English) I don't know where I
21 went, whether I went to this court or somewhere else. I don't
22 know. I don't remember.

23 Q Do you remember giving testimony about this case
24 before?

25 A Yes.

1 rgrm 19

Scotto-cross

2 Q Do you remember seeing Mr. Amarante at that meeting
3 before?

4 A Yes, sir, I remember.

5 Q You saw Mr. Lory there?

6 A I don't remember whether I saw him or someone else
7 or Gritz, I don't remember.

8 Q Do you remember seeing Mr. Kain there?

9 A Yes, sir.

10 Q You were asked questions about Mr. Iannuzzi's
11 accident, weren't you?

12 A Yes.

13 Q Did you swear to tell the truth?

14 A Yes, sir.

15 Q Did you tell the truth then?

16 A The absolute truth.

17 Q Do you remember at that time being asked these
18 questions and giving these answers from page 34, line 16:

19 If I may, I will read three questions and answers
20 altogether and you can then translate the entire three
21 questions and answers to him.

22 "Q Well, is your answer, then, that you did have
23 hold of this tag line or heaving line at sometime?

24 "A Wait a minute. Let's understand each other.

25 When the car came in the man had the heaving line in his

1 hand.

2
3 "Q When you say 'the man', you mean the man on
4 the dock?

5 "A Yes. When the car started to run I didn't see
6 the heaving line or anything else. I went down. I threw
7 myself on the deck and then when I got up I saw Mario
8 down in the hatch. That's all. I saw him as he was
9 going up, down into the hatch.

10 "Q Well, if I understand you correctly, it is your
11 testimony that at no time in this loading of this
12 particular car did you have hold of this heaving line or
13 tag line; is that correct?

14 "A No. I couldn't even grab the heaving line
15 because I had to watch out for my own life."

16 Do you remember giving those answers to those
17 questions?

18 A Yes, sir.

19 Q When you threw yourself on the deck as you said,
20 doesn't that mean you threw your entire body on the deck?

21 A Yes, but at that time I wasn't able to explain
22 myself. It is not that I threw myself down, I crouched down.

23 Q I see.

24 Why is it you weren't able to explain yourself at
25 that time when Mr. Amarante was interpreting for you?

1 rgrm 21

Scotto-cross

2 MR. LORY: Objection, your Honor. It now gets to
3 be argumentative.

4 THE COURT: No, I will permit it. Go ahead.

5 A That's the best that I could have explained myself.

6 Q And today you want to change your description from
7 throwing yourself on the deck to crouching down; is that
8 right?

9 MR. LORY: Objection, your Honor. This again is
10 interpretation.

11 THE COURT: I think I will sustain it. He said what
12 he meant by throwing himself down was crouching. I think
13 that is the answer.

14 Q Mr. Scotto, would you agree with me that if you had
15 thrown yourself down on the deck you would be in no position
16 to see anything that would have happened in the hatch square
17 or at the hatch coaming?

18 MR. LORY: Ogjection, your Honor. This is now
19 immaterial.

20 MR. COHEN: Oh, no, there is testimony in here that
21 he threw himself down on the deck. That is what he said in
22 his deposition, your Honor.

23 MR. LORY: Mr. Cohen, it is your interpretation of
24 the record.

25 THE COURT: I will sustain the objection, but, Mr.

1 Scotto, if you were lying on the deck, could you have seen
2 what happened at the hatch coaming?
3

4 THE WITNESS: But I wasn't lying on the deck.

5 THE COURT: But if you had been.

6 THE WITNESS: No.

7 MR. COHEN: If your Honor please, may I offer into
8 evidence that portion of this deposition, the questions and
9 answers which I just read?

10 THE COURT: You may, but he accepted them as having
11 been asked and answered, so the answer is you may.

12 Q You say now that you crouched down instead of
13 throwing yourself down on the deck; is that right, Mr. Scotto?

14 MR. LORY: Ogjection as to form, your Honor. You
15 say now.

16 THE COURT: I will sustain it as to form.

17 Q Well, Mr. Scotto, your testimony here this morning
18 is that you crouched when you saw this draft swinging over
19 you; is that right?

20 A Yes.

21 Q Do you say to this Court and jury that from your
22 crouched position you were able to see the draft and Mr.
23 Iannuzzi?

24 A To whom, sir?

25 Q To this Court and to this jury.

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2 A You mean the way I showed you the way I was here
3 now?

4 THE COURT: You better start again, Mr. Cohen.

5 Q Mr. Iannuzzi, when you --

6 MR. LORY: Mr. Iannuzzi is not here.

7 MR. COHEN: I am sorry.

8 Q Mr. Scotto, when you went into this crouched
9 position, in what direction were you facing?

10 A In the direction of the ship forward and then I
11 turned this way (indicating).

12 Q Mr. Iannuzzi, as that draft came up --

13 MR. LORY: Mr. Cohen, we are here because Mr.
14 Iannuzzi is not.

15 MR. COHEN: We don't need that, Mr. Lory. Please
16 forgive me.

17 Q Mr. Scotto, as you were watching the draft come up,
18 you were at the rail looking over the rail onto the dock; is
19 that correct?

20 A Yes.

21 Q From that position your back would be toward the
22 coaming in the hatch square?

23 A Yes.

24 Q You would have remained in that position trying to
25 grab ahold of the tag line; is that correct?

1
2 A Yes, sir.

3 Q Now, you couldn't grab ahold of the tag line because
4 you say that car suddenly started to swing inward; is that
5 right?

6 A Yes, sir.

7 Q You became very, very worried about your own safety
8 as soon as that happened; is that right?

9 A Yes, sir.

10 Q You immediately dropped down; is that correct?

11 A I crouched down, yes.

12 Q Wouldn't you have crouched down in the same position
13 in which you were standing, namely with the front of your
14 body toward the rail and the back toward the coaming?

15 MR. LORY: Objection, your Honor. We are getting
16 argumentative.

17 THE COURT: I will sustain that objection.

18 Q Did you crouch down in the same position in which
19 you were standing, the front of your body to the rail and
20 your back to the coaming?

21 A I just told you that when I crouched down my face
22 was forward.

23 Q So that before you crouched you shifted your position
24 to face forward; is that correct?

25 A Yes, sir.

1 rgrm 25

Scotto-cross

2 Q What was the reason for your turning to face
3 forward before you crouched to avoid this danger that you are
4 testifying about?

5 A Because that's the way I crouched down, facing the
6 bow.

7 Q Did you remain in that crouched position for some
8 period of time?

9 A From the time that Mr. Iannuzzi went down into the
10 hatch, after I turned my body I saw him go down into the hatch
11 and then I left.

12 Q Did you go to the hospital with Mr. Iannuzzi, by
13 the way?

14 MR. LORY: Objection, your Honor. That is grossly
15 immaterial.

16 THE COURT: It calls for a yes or not at this point.
17 Let's just see. I do not think it is immaterial, but let's
18 see.

19 A The answer is no.

20 Q Approximately how long was it that you were in that
21 crouched position, sir?

22 A Who can remember? Seconds, two minutes, five
23 minutes.

24 Q From that crouched position are you telling this
25 Court and jury you are able to see Mr. Iannuzzi?

1 rgrm 26
2 A Yes, sir.

3 MR. COHEN: Excuse me, your Honor, I see a witness
4 has just come into the courtroom. May I advise him that he
5 should be in the witness room?

6 THE COURT: Is this the officer?

7 MR. COHEN: It is the police officer, yes.

8 THE COURT: Very good.

9 MR. COHEN: May I have the last question and answer
10 read back, please.

11 (Record read.)

12 Q Is it your testimony that these drums which were
13 waist-high did not obstruct your vision from the crouched
14 position?

15 A No.

16 Q Where did you see Mr. Iannuzzi standing?

17 A Near the coaming.

18 Q Whereabouts near the coaming?

19 A He was midway, midway at the hatch.

20 Q Was he standing at the coaming in a place that would
21 be in the path of the draft?

22 A Yes, sir.

23 Q What was he standing on?

24 A I don't know. He was talking with the hatch boss
25 down there. What do I know?

1 rgrm 27

2 Q You heard him talking with the hatch boss?

3 A No. No, they were speaking, but I couldn't hear what
4 they were saying.

5 Q You were also standing about midway in the length
6 of the hatch; is that correct?

7 A Yes, sir. Maybe a little bit back or a little bit
8 forward. I can't remember.

9 Q Did you actually see this car strike Mr. Iannuzzi?

10 A Yes, sir.

11 Q What part of the car did you see strike Mr.
12 Iannuzzi?

13 A The back part of the car, the rear.

14 Q When you say the rear of the car, what specifically
15 are you talking about?

16 A I don't know. Who can remember any more. I saw
17 the back part. I saw it strike him. I can't remember.

18 Q At that time was Mr. Iannuzzi bent over the rail
19 talking to somebody down below?

20 MR. COHEN: Excuse me, I withdraw that. I said bent
21 over the rail. I want to withdraw that.

22 Q Was Mr. Iannuzzi at that time bent over the coaming
23 talking to somebody below?

24 A I saw Mr. Iannuzzi when I turned, at the time that
25 the car made that motion. That's all. That's when I saw him,

1 rgrm 28

2 when I turned around and I saw him on the coaming.

3 Q Was he bent over the coaming talking to somebody
4 down below?

5 A I believe so. He wasn't there for nothing.

6 Q What part of his body was struck by the car?

7 A I don't know. Maybe the back, but I don't know.

8 Q Can you show us with your hand what part of his body
9 you saw being struck by the car?

10 A His shoulders. The back part of his shoulders and
11 his lower back here.

12 Q The back part of his shoulders and his lower back
13 here. I see.

14 This car was swinging rather fast at the time,
15 wasn't it?

16 A Yes. It was swinging fast.

17 Q And it was a large, heavy car, wasn't it?

18 A Yes, sir.

19 Q Was anybody else on the deck in that area at the
20 time?

21 A I didn't see anybody. I only saw when I turned
22 around I saw him.

23 Q Before you turned around and saw him being struck
24 by the car, had you see him there?

25 A I don't understand your question.

1 rgrm 29

Scotto-cross

2 Q You are telling us that you saw Mr. Iannuzzi being
3 struck by the car and my question is, for how long before you
4 saw him being struck by the car had you seen him on the deck
5 in that area?

6 A I don't remember that. Maybe he was going forward,
7 maybe he was going aft. He was always walking.

8 Q Did you see him there for any period of time
9 immediately before the time that you say you saw him struck
10 by this car?

11 MR. LORY: May we have some designation of what Mr.
12 Cohen means by "there" in the question?

13 THE COURT: I think the witness understands it.
14 Go ahead.

15 A I saw him during the day that he was walking back
16 and forth.

17 Q This was the fourth car --

18 THE COURT: Mr. Lory, you were right. Will you
19 establish where "there" is and then let's go forward.

20 MR. COHEN: I will do it this way, your Honor.

21 Q This car that was involved in the accident was the
22 fourth car that was coming on, wasn't it?

23 A Yes, sir.

24 Q The first three cars that came on came on with no
25 trouble; is that right?

1 rgrm 30

Scotto-cross

2 A Yes. They came in all right.

3 Q Between the time that the third car was taken aboard
4 and stowed and the time of this accident, did you see Mr.
5 Iannuzzi on the deck in the area where you say you saw him
6 being struck?

7 A No,

8 Q So that from the time the third car was taken aboard
9 and stowed up until the moment that you saw him as you tell
10 this Court and jury being struck by the fourth car, you hadn't
11 seen him at all in that area?

12 A No.

13 Q During that period of time between the loading of
14 the third car and the happening of this accident, did you
15 notice any other people working on the deck, on the main deck
16 on the inshore side of the number 3 hatch of the Huguenot?

17 A No.

18 Q Did you see any carpenters working on the main deck
19 of the Huguenot inshore of the number 3 hatch during that
20 period of time?

21 MR. LORY: Objection, your Honor.

22 THE COURT: I will allow it.

23 A No.

24 Q At the time that you testified that you saw this
25 car strike Mr. Iannuzzi about the shoulders and low back, did

1 rgrm 31

2 you see any carpenters working near him?

3 A No.

4 Q Do you know whether there were any carpenters
5 working in the upper 'tween deck of the number 3 hatch at
6 that time?

7 A I don't remember.

8 Q Was there any lumber lying about the deck of the
9 Huguenot in the area of the number 3 hatch?

10 A I don't remember.

11 Q Did you see any men passing lumber from the main
12 deck, number 3 hatch, down to the upper 'tween deck level?

13 A No.

14 MR. COHEN: Thank you.

15 THE COURT: Mr. Lory, any questions?

16 MR. LORY: I have no questions.

17 THE COURT: Mr. Kain?

18 MR. KAIN: I have just one or two, your Honor.

19 RE CROSS EXAMINATION

20 BY MR. KAIN:

21 Q Mr. Scotto, is it your testimony that when you saw
22 Mr. Iannuzzi struck by this car, that he was standing on a
23 ladder; is that what you said?

24 THE INTERPRETER: I didn't hear. I'm sorry, Mr.
25 Kain. Would you repeat that, please.

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(Question read.)

A The ladder is the coaming.

Q Well, was he actually standing on a ladder affixed or attached to this coaming?

A He was on a ladder, he was on the coaming. Now I don't know what he was on, but that's where he was.

Q What portion or how much of his body was above the top of the coaming at that hatch when he was struck by the car?

A I don't remember. I don't know the height, whether it was five feet or six feet. I don't remember.

Q Can you give me an estimate of how much of his body was above the top of this coaming when he was struck by the car?

A What can I tell you? I don't even know how to show it to you. He was there.

Q At the time of this accident, was there a clear space all around this hatch coaming?

A I know only that there was about two feet of space where I was working, the inshore side and I said a foot and a half where I was.

Q Do you know whether there was a clear space adjacent to the coaming on the offshore side, the other side of the hatch?

1 rgrm 33

2 A I didn't work there.

3 Q That is not my question. Do you know whether there
4 was a clear space on the offshore side?

5 A No.

6 Q Do you know whether there was a clear space forward
7 and aft of the hatch?

8 A No.

9 MR. KAIN: Thank you.

10 THE COURT: You may step down, sir.

11 (Witness excused.)

12 MR. LORY: Does your Honor wish to take your
13 morning recess now or --

14 THE COURT: I prefer to wait about 14, 20 minutes if
15 I may. It puts it a little more in the middle of the
16 morning.

17 MR. LORY: I call Maria Iannuzzi.

18 M A R I A I A N N U Z Z I , called as a witness in her
19 own behalf, having first been duly sworn, testified as
20 follows through the interpreter:

21 THE COURT: Mr. Lory, I think we will take our
22 recess. Ladies and gentlemen, we will stand in recess for
23 about ten minutes.

24 (Jury not present.)

25 THE COURT: Mrs. Iannuzzi, have you ever testified

RGP

A F T E R N O O N S E S S I O N

2:00 p.m.

(Jury in box:)

THE COURT: Gentlemen, before we get too far beyond this stage of the case, I have concluded that the statement to Mrs. Iannuzzi by the employee at the clinic is an operative fact as to her and is not hearsay. Therefore, I will admit the testimony with regard to the statement that she was not entitled to hospital benefits after three months.

Based on that fact as to her, she thereafter purchased Blue Cross, and I will therefore admit the Blue Cross slips in evidence.

If you wish to cross-examine further or adduce proof at a later time with regard to that, of course, that is entirely appropriate.

(Plaintiff's Exhibit 10 for identification was received in evidence.)

THE COURT: Go ahead, please.

MR. LORY: I call Mr. Edward Ferenczy, please.

1 RGP 2

2 E D W A R D F E R E N C Z Y , called as a witness by
3 the Plaintiff, being first duly sworn, testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. LORY:

7 Q Mr. Ferenczy, what is your educational background?

8 A Well, I am a graduate of the United States Merchant
9 Marine Academy.

10 Q Will you please speak up, because I want the jury
11 to hear you. Your voice has to carry across the room.

12 A I am a graduate of the Merchant Marine Academy,
13 where I received my marine licenses. I am a graduate of
14 Stevens Institute of Technology, and I received a mechanical
15 engineering degree from there; and I am a graduate of C. W.
16 Post, and I received a master's degree in ocean engineering.

17 Q What is your occupation?

18 THE COURT: Sir, what is ocean engineering, if I
19 may ask?

20 THE WITNESS: I is really the applying of civil
21 engineering to the marine environment, especially under-
22 surface environment.

23 THE COURT: I see. Go ahead.

24 Q Mr. Ferenczy, what is your present occupation?

25 A I am an associate professor at the United States

1 RGP 3 Ferenczy - direct

2 Merchant Marine Academy.

3 Q In what department, sir?

4 A Department of Engineering.

5 Q What do you teach in that department, sir?

6 A I teach marine engineering, thermodynamics, mechan-
7 ics, subjects like that.

8 Q Do you give a course in hydraulics?

9 A Specifically, no.

10 Q Do you give any course that includes the study of
11 hydraulics?

12 A Yes. The course in marine engineering is essenti-
13 ally a heat and power course, and it involves all the techni-
14 cal sciences and its application. In this course we dwell main-
15 ly on the application of the associated sciences like thermo-
16 dynamics, hydraulics, mechanics, statics and subjects like
17 that.

18 Q Mr. Ferenczy, just before, you mentioned that you
19 received certain licenses. What licenses do you hold?

20 A Well, I have a chief engineer's license in steam,
21 unlimited horsepower; and I have a third assistant's license
22 in diesel, unlimited horsepower; and I hold a professional
23 engineer's license in New York State.

24 Q What is the significance of a professional engineer's
25 license in New York State? What does that involve, and what

1 RGP 4 Ferenczy - direct

2 does that include?

3 A Well, it involves passing an examination showing
4 that you are competent. The privileges -- I think it allows
5 you to professionally call yourself an engineer.

6 Q Mr. Ferenczy, at my request did you review the
7 final drawings of the South African Huguenot as well as the
8 instruction book for electro-hydraulic deck machinery, which
9 is marked, I think, Plaintiff's Exhibit 2 in evidence?

10 Did you review those documents for me?

11 A Yes; I did.

12 Q Does that instruction book, Plaintiff's Exhibit 2
13 in evidence, relate to the machinery that was on board the
14 Huguenot?

15 A Yes; it does.

16 Q Did that instruction book also include details,
17 drawings, descriptions, operational procedures with respect
18 to all the winches that were aboard that vessel?

19 A Yes; it did, although I did not read for all the
20 winches.

21 Q Pursuant to my instructions, did you confine your-
22 self to the deck machinery? That would be the five-ton
23 winches?

24 A Yes; I did.

25 Q Of course, that book includes information with

1 RGP 5 Ferenczy - direct

2 respect to warping winches, topping winches and all the other
3 types of machinery that was aboard the vessel?

4 A Yes.

5 Q Before we get into anything, can you explain to
6 this Court and this jury how a hydraulic motor works?

7 A Yes. May I use the blackboard?

8 THE COURT: You may.

9 A (Continuing) Essentially, a hydraulic motor in prin-
10 ciple is quite similar to a water wheel, where you have this
11 fluid striking a blade or a vane, carrying the vane in the
12 direction of the moving fluid. Now, what this does, of
13 course, if this vane is a reasonable distance from a center,
14 it provides a turning motion to a shaft, and, of course,
15 this turning motion is the motion that we desire to turn a
16 drum upon which is reeved or wound cable that will do the
17 hoisting of a weight or that will, of course, reversing its
18 direction, will lower this weight.

19 So, essentially, what we have, we have this disk
20 that is quite similar to a water wheel, and, of course, it
21 has a center. Now, it has many vanes, but I am going to
22 draw just a few vanes.

23 So this disk is slotted. Let's say it has a slot
24 here (indicating), and I will just draw four slots, although
25 it certainly can have more than four. Now, as this disk

1 RGP 6 Ferenczy - direct

2 spins, we realize that there is a force that we will call
3 centrifugal force. So if we were to put in a vane in this
4 slot, something like this, and if we were to allow this disk
5 to rotate, it would tend to throw these vanes or paddles
6 out, similar to in the amusement park, where you have the
7 horizontal disk, and children will climb upon this disk, and
8 as it turns it will throw them off.

9 So in order to control this, they have the cavity
10 of the casing, which will resemble an ellipse, and it may
11 look like this (indicating).

12 Now, as this goes around like this, you can begin
13 to see what will happen. I have to excuse my board work.
14 It is not too good. But, anyway, the centrifugal force
15 initially will keep this vane riding on this contour, so we
16 will have this vane going in and out, depending upon where it
17 happens to be. Now, here it will certainly be all the way
18 in, and in this point -- I will just improve this a bit to
19 something like that. That would rise to this point (indicat-
20 ing).

21 Essentially, that would be the hydraulic motor.

22 Now, what they do is -- we will only talk about
23 one section, because it applies to all. In this area --
24 and I will show it dotted, because the vanes are constrained
25 to follow that contour. If we were to allow oil at a fairly

1 high pressure to enter that void, upon striking this vane
2 it would tend, of course, to push it across, because the
3 fluid is going to tend to go in that direction. So over
4 here we have to have a similar type of ducting or piping
5 so that as this fluid is being pumped in, operating on that
6 vane, causing it to move -- and this is certainly -- because
7 it is limited by its slow -- this must cause the disk to
8 turn, and there will be a flow of oil going out back to the
9 pump, and, of course, this will come in.

11 That's essentially how a hydraulic motor works.

12 Now, all you need is really one of these voids,
13 you see, with your associated flow of fluid in and fluid
14 out to provide this turning moment or, as we say, torque.

15 Now, the particular hydraulic motor on the Huguenot
16 has three of these spaces, you see. So at a time there
17 were three groupings of vanes around this disk actually pro-
18 viding this torque in order to do the work of lifting or
19 lowering.

20 Q You may have gone to my next question.

21 Is pressure generated in that system, in those
22 chambers, by the revolvment of the disks?

23 A Yes. Pressure -- Now, perhaps I should define
24 "pressure", because the ancients had a great amount of dif-
25 ficulty in defining pressure.

1 RGP 8

Ferenczy - direct

2 Pressure is merely a force. In here it is going
3 to be a hydraulic force or a force of a liquid operating over
4 a unit area. So all the pressure is is this force, whatever
5 it might be, operating over a unit area. We call that pres-
6 sure.

7 Now, the only way we can build up a pressure here
8 is to resist it. We all know that if we were watering the
9 garden and, say, we didn't have a nozzle on the hose, the
10 water would sort of run out in a very polite way, and if we
11 were to apply our thumb against the outlet of the hose and
12 hold it, to restrict this, this restriction causes a pressure
13 rise, which, of course, will spray the water over the lawn.

14 So in order to have a pressure, we must have a
15 resistance of sorts. Of course, what provides the resistance
16 here, of course, is, this is directly or through a series
17 of reduction gears, is connected to the drum of that -- of
18 a similar winch that you see on the model, and this provides
19 the resistance to turn. The greater the resistance to turn,
20 the greater the pressure.

21 Q Mr. Perenczy, with respect to the right lead-in
22 pipe at the chamber --

23 A Yes.

24 Q -- is there any force driving the oil down into
25 the chamber?

RGP 9

400a
Ferenczy - direct

A The pump, you see. This is from the pump, the main pump.

Q Now, you've got a pump that is driving the oil down the chamber on the right hand side of your drawing.

A Yes.

Q This disk with the vanes on it, that's the motor itself, the hydraulic motor itself, is it not?

A It is.

Q The pressure that would be created: would it be fair to say that that would be dependent upon the load it must lift?

A Precisely.

Q Can this system run free?

A No; it cannot run free.

Q What is meant by running free?

A The interpretation -- Running free means that if you short-circuit the flow or do not have flow coming in or flow leaving, that this vane is solidly anchored in this fluid, just as solidly as if it were concrete, because of the inflexibility of the hydraulic oil.

Q Does this motor have different ranges of speed for different weights of loads?

A Yes; it does.

MR. LORY: Excuse me, Mr. Forenczy.

1 RGP 10 Ferenczy - direct

2 I have a camera here. In the event Mr. Forenczy
3 must erase, shall I take pictures of what we have?

4 THE COURT: Is that agreeable?

5 MR. KAIN: Yes; it is.

6 THE COURT: All right.

7 A (Continuing) Okay. Using the descriptive literature
8 furnished me, the instruction book, on page 18, with regard
9 to the question, it defines the cargowinches as an FHW-5 --
10 this is on page 18 -- cargo winch and topping winch. The
11 particulars of the cargo winch. It says, "Capacity of cargo
12 drum." It has a 5/2.5/1.0 x 36/55/110 meters per minute.
13 A meter is 39 inches slightly larger than our yard.

14 What this means is that this cargo drum can hoist
15 five tons at a speed of 36 meters per minute. That would be
16 if you put a spot on this cable, that if you timed it for
17 a minute, that cable would reeve in -- that spot would have
18 moved 36 meters per that one minute.

19 We then look at the next spot, and it says
20 2.5/55. That indicates that this same winch can lift 2.5 --
21 two and a half tons at 55 peters per minute.

22 And, lastly, we look at the one-ton -- 1.0 tons,
23 and we see 110 meters per minute, which means that for a
24 one-ton load, a lighter load, it naturally can reeve in the
25 cable so much faster.

1 RGP 11 Ferenczy - direct

2 Now, the reason for that is this:

3 I mentioned before that we were only talking about
4 a one-chamber device and that these winches are a three-
5 chamber device. Now, there are valves they call selector
6 valves. What happens is this: When you initially start
7 this hydraulic motor -- of course, the hydraulic motor has
8 no idea of the loading characteristics -- it will allow oil
9 to go to one of these chambers. Now, if the resistance is
10 so great because of the heaviness of the load, that vane is
11 going to be quite reluctant to move. Therefore, we will
12 have an unusual increase in pressure.

13 Now, in the device itself are spring-loaded
14 valves that will lift when a pressure exceeds a certain
15 point. So when that pressure exceeds a certain point, one
16 of these so-called selector valves will open, allowing the
17 oil to go to, say, the second chamber. Now, if the second
18 chamber -- and the first chamber cannot lift this load be-
19 cause of its heaviness, again, the pressure will rise, and
20 in rising it will lift a third spring-loaded selector valve,
21 which will -- and I have not shown it on this drawing --
22 which will allow the oil to flow to the third chamber.

23 But now we must remember this. If we are now
24 going to now analyze the speed -- we have shown, hopefully,
25 that this windlass will lift these three categories of weight.

1 RGP 12

2 But what happens? If you think for a moment, this flow of
3 oil is being supplied by a pump that has a given capacity.
4 It can pump so much oil. So therefore, if we have a light
5 load and we are only pumping oil to one chamber, it means
6 that that oil will be able to be pumped through that chamber
7 at its highest rate of speed. But it is only lifting a light
8 load, so this is why the specifications read "one ton at 110
9 meters per minute."

10 Of course, if we divide that amount of fluid com-
11 ing into two chambers, it is going to go only roughly half as
12 fast through the two chambers. Therefore, the speed will
13 be reduced. At its heaviest work demand, we are going to
14 divide the flow into three patterns, and, of course, each
15 vane will receive the fluid at a high pressure, but at a
16 reduced flow characteristic, a reduced velocity.

17 Q Does the pump work with a constant-speed motor?

18 A Yes.

19 Q Mr. Ferenczy, can you describe for us the hydraulic
20 system with respect to the cargo winches as they are de-
21 picted and shown in those drawings which you have reviewed
22 for the Huguenot?

23 A Yes; I will.

24 First of all, before I make a drawing, I would
25 just like to chat a little about it. We must remember that

RGP 13

1 we have an operator, and he is -- he is the brains of this
2 equipment. I hope it stays that way for a long time. But,
3 at any rate, all we want from this man is just a signal.
4 We don't want any real work out of this man, you see, so,
5 of course, these levers should be very lightly constructed
6 and small in nature, so that it is almost a tireless effort
7 in moving these -- and I am talking about the remote control
8 handles -- either into the neutral -- no, no-movement
9 position -- or hoist position or lower position, because we
10 are going to exact only from him the requirement to produce
11 the signal. It doesn't carry too much substance.
12

13 So what we need is an intermediary type of system,
14 and this is produced -- in other words, we take his signal,
15 and we give it muscles so it can do some work. The
16 muscle part of this device that I will draw is the so-called
17 servo motor system.

18 Now, this does not give it too much muscles, but
19 it is just enough to move the manual -- and you heard them
20 talk about the manual system actually on the windlass, which
21 takes a little more effort to do, and if a man were to do
22 this all the time, he would tire, and his skill perhaps would
23 wear out.

24 All these valves do now is to either have the oil
25 flow in this way and out, which will give us a rotation in

1 RGP 14 Ferenczy - direct

2 this direction, or to reverse this and have the oil flow in
3 this cavity, out this cavity, and of course we would see
4 that the little water wheel, our disk, would move clockwise.
5 That's the function. So I will draw what I have chatted
6 about.

7 Q By the way, Mr. Ferenczy, while you were here
8 yesterday, you were present when I read the deposition of a
9 Mr. Pitt, were you not?

10 A Yes; I was.

11 I am not going to, unless you ask me, get into
12 the fine details of the mechanism, so I will draw a block
13 diagram, and I will indicate the functions of these blocks,
14 and then, if you feel that you want further clarification,
15 I will give it.

16 Up here -- and this is the top of that pedestal
17 that we were talking about --

18 MR. LORY: Excuse me, Mr. Kain. Do you have
19 Exhibits A and B?

20 Q Mr. Ferenczy, I have here Defendant's Exhibit B
21 and Defendant's Exhibit A, which depict together the stanchion
22 together with the winch controls.

23 When you talk about the control handles, which
24 handles are you referring to?

25 A I am talking about the two handles here. We call

1 RGP 15 Ferenczy - direct

2 that the transmitter, because merely what we are doing is,
3 we are sending, as I said, this message that the operator
4 gives to the overall system.

5 Q For the record, those are the handles at the top
6 of the stanchion?

7 A Yes. Now, what this involves -- and I will just
8 draw this -- that shows the handles. I am a little bit too
9 high there, but that's okay.

10 Now, what this does -- this is filled with oil,
11 and, again, it operates a little plug. Of course, if you
12 move the plug one way, it is going to push the oil around
13 that way, and it will fill up here, and if you move the
14 plug the other way, it is going to do just the other.

15 So coming from that little plug is a line, and it
16 will come down, and it operates another little plug. That's
17 all it does. He moves his plug this way, and there is an
18 associated plug down below that's connected -- See, there
19 is no interconnection as yet. If he moves this this way,
20 this might move this way (indicating), and it just keeps
21 going like that. But this little plug serves a very import-
22 ant function.

23 Q So there is no confusion, is it true that one of
24 those handles and solely one would move the plug in the top
25 rectangular box that you have, and the other one is for

1 RGP 16 Ferenczy - direct

2 another, similar system?

3 A Yes. I better leave out -- I am glad you brought
4 that point up. I was attempting to show the two handles,
5 but when we just have the one handle, it might be better
6 for me to show it this way. Thank you, Mr. Lory.

7 Q Movement of that handle would move this plug that
8 you are speaking of either in one direction or the other; is
9 that right?

10 A Yes; it would. This we call the transmitter.
11 Of course, I am not too good at planning, so I will have to
12 break up the word. That is the transmitter. This little
13 device we call the pilot valve.

14 Now, what that does -- all that pilot valve does
15 is, it sends another flow of oil -- this oil now is moved
16 by a small pump and motor, and we call that the zero system.
17 So I am going to show another block here, and I will call it
18 the selector valve, although they are combined into one
19 casing.

20 So what that does -- I am going to draw down here
21 a so-called suction line. Now, remember in the testimony
22 that was given they spoke of a large tank, a receiving tank
23 that was quite a ways aloft, I believe about forty feet aloft.

24 Q You are referring to the testimony of Mr. Pitt
25 that I read yesterday, are you not?

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2 A Yes. We just have that tank up there somewheres,
3 but what happens is, there is a small motor, and another
4 pump is here, a hydro pump. This pumps into this selector
5 valve, okay? It takes suction from that main line, you
6 see.

7 Now, this selector valve -- all it does, now, is,
8 it sends fluid at one instance in one direction, and then
9 it reverses the process and sends it in the other direction.
10 So what we have here, coming from this, we have this fluid.

11 Now, remember, this fluid is different from this,
12 and because it is pump-operated, it has much more substance.
13 It has more muscle than the other. It comes down, and it
14 comes into this device, upon which is located the manual con-
15 trol for the pump.

16 Q Mr. Ferenczy, referring again to Exhibits A and B,
17 is the manual control indicated on the exhibit?

18 A No. It is shown on the other -- No; I don't see
19 it.

20 Q It is not on the stanchion?

21 A No; it is not on the stanchion. This is the manual
22 control that's located on the winch. See, it's on the winch.

23 Now, what this handle does, from here -- Now we
24 have the third system, you see. The third system, this
25 handle operates again another directional type of valve that

2 actually takes the main flow of this fluid, see, and directs
3 it to the cargo winch.

4 So we can show here the fluid coming out of this and
5 going to the -- we call this the cargo -- but I will stay
6 with the winch, the winch hydraulic motor. Of course,
7 attached to this is the drum upon which the cable is reeved
8 or wound. Okay? That's about it.

9 The only thing I have not drawn here is the --
10 and this is, of course, called the receiver. That, essential-
11 ly, is our system. The only thing I did not draw was the
12 main hydraulic pump supplying this oil, you see, to the
13 winch. I don't know whether I should do that or not. Maybe
14 it's unnecessary at this time.

15 Q Now, Mr. Ferenczy, confining yourself to the trans-
16 mitter, are there any further controls that you can depict
17 for us to give us a better understanding of the stanchion and
18 the controls that appear upon the stanchion, with their par-
19 ticular purposes?

20 A Yes; there are. The way it is drawn, this oil
21 in this circuit really does not circulate. It merely oscil-
22 lates. It oscillates back and forth, and this oil oscillates
23 back and forth.

24 Interconnecting this is a line, and it's connected
25 to a -- I have to look at my notes -- it's a phase something

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2 or other.

3 Let me just see if I can pick that up. It's a
4 phase adjusting valve. I'm sorry.

5 That valve, too, has a handle on it, but it must
6 remain in a close position.

7 Q Mr. Ferenczy, is that valve shown on the stanchion
8 or the control handle to that valve?

9 A Yes.

10 Q Will you point it out to the jury?

11 A It will be down here, this valve.

12 Q One on either side?

13 A Yes.

14 Q There are two systems involved there, one for
15 each winch; is that not so?

16 A Yes.

17 Q One for the port and one for the starboard?

18 A That's correct.

19 Q What is the purpose of the phase adjustment valve?

20 A The phase adjustment valve: the function of it is
21 to make sure that you have equal amounts of fluid on each
22 leg, because they are completely divorced and separated
23 from each other. So in order to have a proper mimicking,
24 see, of this receiver to the transmitter, you must have the
25 identical, same amount of fluid on either side.

1 RGP 20

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2 Q Mr. Ferenczy, the transmitter: does that have a
3 directional valve?

4 A No; it does not.

5 Q Does the phase adjustment area have a directional
6 valve?

7 A No; it does not.

8 Q You show two lines on either side of the trans-
9 mitter down to the pilot valve.

10 A Right there (indicating).

11 Q Is that system on either side separated in any
12 way?

13 A Yes; it is separated. I did make a drawing. I don't
14 know how clear it will be, but this shows --

15 Q Firstly, what is it separated by?

16 A It is separated by --

17 Q Yes?

18 A It has its own separate void, and then it has a
19 sealing plunger entering this void that will not allow the
20 escape or the entry of any fluid.

21 Q Is it a fact, Mr. Ferenczy, that to the left and
22 to the right, those two legs that you have coming down to
23 the pilot valve, that they are not interconnected except
24 through the phase adjustment valve?

25 A True.

1 RGP 21 Ferenczy - direct

2 Q What prevents the interconnection between the two
3 sides?

4 A This phase adjustment valve, essentially -- it has
5 two little valves in here that are spring loaded, and the
6 greater the pressure that is exerted in the -- and there is
7 not a great pressure in that line. Remember, I told you that
8 we only want to pick up the signal from the operator, not
9 any muscular exertion.

10 Q The thing that bothers me is with the transmitter
11 and using the platform type diagram it appears as though the
12 box you have is a reservoir. Is it in fact a reservoir?

13 A Up here?

14 Q Yes.

15 A It is a reservoir.

16 Q Is there anything in that reservoir?

17 A What do you mean? Oh, outside of that?

18 Q IN this --

19 A In this transmitter there is a little dipstick
20 in the transmitter, and, of course, this is how you fill
21 this system. It is through the transmitter. You at times
22 fill and alternately at times you must purge the system --
23 and I am talking about just this remote system.

24 You see, we have right here -- we could divide
25 this hear and call just up here the remote system.

1 RGP 22 Perency - direct

2 Q The phase adjustment valve permits you to do pre-
3 cisely what?

4 A What it does, it just connects this line with that
5 line (indicating). That's all it does.

6 Q Would it be fair to say that it permits you to
7 equalize the oil that is flowing in the line on the left to
8 equal the flow of oil or the content of oil in the line on
9 the right?

10 A There is no flow as we know it. There is an
11 oscillation. Yes; that's essentially correct.

12 Q Does it permit you to equalize the oil on either
13 size of the remote system, as you have depicted it?

14 A Yes; it does that.

15 Q You mentioned air before, did you not, Mr. Ferency?

16 A I don't recall, but I may have.

17 Q Would air have any effect on the operation of the
18 remote system?

19 A Most decidedly so. You see, perhaps I can explain
20 that best in that we have -- in our category of fluids we
21 have so-called incompressible fluids and we have so-called
22 compressible fluids. Most liquids tend to be incompressible,
23 and, of course, vapors tend to be compressible.

24 Now, what do we mean by this? Essentially, it is
25 this:

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1 If we have a fluid that is incompressible, and we
2 attempt to compress this -- in other words, to make it
3 occupy a smaller volume -- that because it resists any
4 change in volume, the pressure goes up to extremely high val-
5 ues, pretty much as if I were to take this pencil -- and,
6 of course, we know that I don't have strength enough to com-
7 press this pencil -- change its volume in any way, so it
8 means that if I am successful in moving the eraser end of
9 this pencil over, say, a half an inch, that the point end,
10 too, must go exactly a half an inch.

11 This is why in our hydraulic system we insist on
12 a so-called incompressible fluid, because if the operator
13 moves his little ram precisely a half an inch, that means
14 that this selector valve, its pilot valve is going to move
15 precisely a half an inch. If he moves it one ten-thousandth
16 of an inch, if it is an incompressible fluid, it means the
17 other, the minicking device, too, must move that one ten-
18 thousandth of an inch.

19 Now, contrast this to a compressible fluid. What
20 we can do -- let's say we have air. We are going to talk
21 about air, and this is a highly compressible fluid. If I had
22 a column of air, I could certainly make it occupy a smaller
23 volume, or if I didn't make it occupy a smaller volume, I
24 could keep the same volume and add -- continually add more
25

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air to it, which would increase the pressure.

So now -- with the result if I had air in a section and I compressed this -- say I moved this -- say this pencil had a section, it wasn't all solidly wood; it had a small section, say an inch in sideways area -- I have a very special pencil; it is a sandwich of wood and then a section of air -- and we have to use our imagination a little -- and then we have a section of wood, or, better, a spring. I could push this pencil together and pushing the head in a half inch would in no way guarantee that the point must move a half inch. Do you see?

Q Would it result in a cushioning effect?

A This is what they refer to as a cushioning effect. I personally dislike the term "cushioning", because it is misleading. It provides a very treachous effect.

Q Mr. Ferenczy, with respect to the system as you have depicted it on the board, is there any segment of that system which is prone to the introduction of air?

A Yes. As I said, there are generally three -- you have three circuits. The one grand feature about having the receiving tank, the reservoir, high is that it can supply oil down to these motors at a pressure. Roughly, if this tank were having oil -- was, roughly, say forty feet above the location of the pumps, that you get approximately about

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2 fifteen pounds per square inch pressure on these pumps,
3 which is very good. It guarantees also a good flow. But
4 what they do, when they return the oil, after the oil goes
5 through the winch hydraulic motor and after it goes through
6 this little servo pump and the manual control, that part of
7 the return system demands that this oil return to this
8 reservoir.

9 Up at the top of this reservoir the surface of the
10 oil is at atmospheric pressure; so therefore they can just
11 spill the return oil into this, and this is pretty fine,
12 because we can then vent it, you see. By venting, what we
13 mean is that if there are any entrapped little slugs or
14 sections, bubbles of air that, as it makes its way up to that
15 fluid, this so-called automatic vent, that the air for the
16 most part is released at that point.

17 So it is done rather automatically. But here, in
18 the remote system, there isn't any provision for this. So
19 if there is any entrapped air it must be purged by some
20 mechanical means.

21 Q When you say "purged", what do you mean?

22 A To rid the system of undesirable fluids and, of
23 course, the air is an undesirable fluid within the system.

24 Q Is there within the design of the system a means
25 of doing this with respect to the transmitter?

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2 A Yes; there is.

3 Q What would that be?

4 A There are little valves, nibbles, that you can
5 open up at certain desirable points in the circuit, and by
6 opening these up you can allow the air to bleed out.

7 Now, it's a good idea, because the air within the
8 oil fluid, if you can imagine a particle or a sphere, it's
9 quite buoyant, so the air is going to tend to ascend in the
10 fluid. So we try to place these little valves in an area
11 at high spots.

12 Q Are these three valves shown on Exhibits A and
13 B?

14 A I am not that acquainted with the particular
15 operating pedestal, I think they call it; is that correct?
16 The operating pedestal?

17 Q Do they show the location of these particular valves,
18 or whatever you want to call them, on the drawings that you
19 brought with you?

20 A They indicate that in the specs, and perhaps I
21 should read the specs to show you where they are.

22 On page 56 -- I can't seem to be able to pick them
23 up. Oh, it's on the second page. I had 56 and 57, I thought.
24 It says --

25 MR. KAIN: May we have the page?

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2 A (Continuing) On page 57 it says, "The reservoir
3 has the air extracting valves at the pilot valve." So this
4 is what I am calling the pilot valve, and it has -- this
5 method, it has the air extracting valves to allow the system
6 to be cleansed of air.

7 Then it says, lower down, in Section B: "The work-
8 ing system, Item 2, four air extracting valves are fitted
9 on the working cylinder of the receiver."

10 Q Mr. Ferenczy, which of these systems would you
11 most expect to find air?

12 A Well, as I mentioned previously, because of our
13 tank located in the kingposts of the ship -- I am referring
14 to these (indicating). I am calling the masts --

15 Q Indicating the solid, thick columns on the deck?

16 A They would have the automatic extraction of air.
17 Where you would not have automatic extraction of air would
18 be in your transmitter and your pilot valve, that very short
19 run of pipe.

20 The whole quantity of oil it contains is very
21 little, less than a gallon, certainly.

22 Q Mr. Ferenczy, did you explain to use the use of
23 the phase adjustment valve?

24 A I explained to you the function of it, and that
25 was to provide an access between the two systems, but how it

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2 works is simply this:

3 There are two -- On this side you have a little
4 valve that's held tight, see, due to the compressive force of
5 a spring, one on this side and one on that side. So whatever
6 pressure is built up in this system tends to more tightly close
7 those two little spring-loaded valves.

8 Now, all this handle does, when you turn it, it
9 just depresses those two spring-loaded valves mechanically,
10 see, so therefore it allows free flow from one side to the
11 other.

12 Q And is the purpose of that to equalize the amount
13 of oil on each side?

14 A Yes.

15 Q This is done with the control handle in the neutral
16 position, is it not?

17 A Yes; it is. I might elaborate on that a little.

18 Q Go ahead.

19 A I made this drawing, and I've just got to show it.
20 This -- if you could follow this -- is the so-called
21 directional valve.

22 MR. KAIN: Excuse me.

23 If your Honor please, may we have it marked for
24 identification?

25 MR. LORY: Of course.

THE COURT: You may.

THE WITNESS: Should I sign that?

THE COURT: No.

(Plaintiff's Exhibit 12 marked for identification.)

Q Now, on your pedestal --

A Thank you. Now we are dwelling on this pedestal. Here are those two lines coming to -- Remember, I am telling you about the pilot valve. Now, this valve, actually it's pretty much like a broomstick with two swelled sections. The oil comes from the transmitter on this side, and that's all it can go, and it can push this club to that side, see. Now, if he chooses, he can with his manipulation of his transmitter handle, cause the oil to come -- the green part to come on this end, push over to this end.

Now, this helix that you see -- and there is also one here -- they are springs that if there is no force of fluid moving, translating this valve, the springs will automatically spring it into the center position. Now, when it comes into the center position, if you will bear with me, this would move over to the center position, and it would keep all of these lines closed.

Keeping these lines closed means no fluid flow, no fluid flow because it is an incompressible liquid. If that vane is trapped in between that, it does not move.

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2 Maybe I should qualify that to a point. Because
3 it is a piece of machinery and because there is movement
4 of parts, we have to have a certain amount of clearance so
5 that we can have this movement, see. Because we have this,
6 in time there is a certain amount of slip of the fluid
7 across the vane, so the vane would move, but very gradually.

8 So for the discussion we say it does not move.

9 Okay?

10 Now, that is the function of the transmitted, and
11 the remote oil, it merely moves this very little plug back
12 and forth, and this center red line here shows this pump,
13 this zero pump that I drew, see, and that comes in here.

14 Now depending upon where these heavy lines are,
15 it determines where the flow goes. In this instance, the
16 flow is coming through this duct. If this were pushed over
17 to the other side, the flow would just come down here and up
18 that duct. That's why we call it a directional valve.

19 The instructions read that this handle should be
20 put in its mid-point and that handle, the transmitter
21 handle, at its midpoint, and this valve -- See, if you re-
22 lieve any oscillatory motion of the fluid, that valve will
23 automatically center itself, but it might not center itself
24 if there was more fluid than here, see, and this is what we
25 call out of phase.

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2 To be in phase, if this was centered, then this,
3 too, precisely must be centered, and if this is off center
4 by a little bit, this, too, must be off center by a little
5 bit. But it can't be that way if this has more fluid than
6 that (indicating) so by pressing down, depressing those two
7 little spring-loaded valves, it allows the fluid to equal-
8 ize.

9 And that is the function of the phase-adjusting
10 valve.

11 Q Mr. Ferenczy, according to the testimony that I
12 read yesterday, both the remote and the manual handles were
13 actuated to phase in. Is this procedure, as described,
14 necessary and is it recommended?

15 A It is not necessary. It is not indicated by the
16 instructional manual. And let me see if I have mine.

17 MR. KAIN: If your Honor please, may I have Mr.
18 Lory's question reread? I didn't hear it.

19 THE COURT: Yes. By all means.

20 (Question read.)

21 THE WITNESS: I should answer that question?

22 THE COURT: Go ahead.

23 THE WITNESS: I thought there was some discussion.

24 A I would not recommend it if for no other reason
25 than that the instruction manual does not recommend it. They

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2 say you must bring these handles to its midpoint, allowing
3 this spring to bring this to the midpoint, provided it can
4 in moving accommodate, see, the difference in the oil. If
5 you were to move this, you would not have any real positive
6 indication that you have the exact quantity of oil on either
7 side.

8 So I would not recommend doing that.

9 Q Is there a proper procedure for priming the remote
10 piston?

11 A Yes; there is.

12 Q As described in earlier testimony, the attendance
13 of someone from the vessel with a hand pump that he would
14 make connections to certain points on top of the station and
15 then pump in oil and then manipulate the operational handles
16 at the top of the transmitter and again do something, mani-
17 pulate the phase adjustment handle.

18 Is that the proper procedure to extra --

19 MR. KAIN: If your Honor please, there is no
20 testimony in this record, at least by the name, of operating
21 the phase-adjustment handle.

22 THE COURT: I don't recall any such, myself.

23 MR. LORY: If your Honor please, the testimony of
24 Mr. Coppola was to the effect that when the man came over he
25 pumped the oil in; he moved the handles on the top, and he

1 moved the handles on the bottom.

2 THE COURT: That was because the handle was hard,
3 not because of any phase adjustment, as I recall it.

4 MR. KAIN: That is correct.

5 THE COURT: I could be wrong in that.

6 MR. COHEN: He said the handle was stiff to move.

7 THE COURT: Stiff or hard.

8 MR. LORY: All right. Let me withdraw it and
9 approach it in another fashion.

10 Q Do you recall, Mr. Ferenczy, when I read the
11 testimony of Mr. Pitt, where at page 23, line 25, this
12 question was put to him and he gave this answer:

13 "Q What was your practice with respect to the mainten-
14 ance of the remote system, if any?

15 "A Similarly on the northbound voyage, we would prime
16 through the remote system to insure that no -- to extract
17 any air that might have been entrapped in the remote sys-
18 tem."
19

20 Then, going down to line 22 on page 24:

21 "Q Would you please tell me what you mean by priming
22 through? What did you do in order to prime through the re-
23 mote control system?

24 "A A little hand pump is attached to the control
25 stand, and this light hydraulic fluid is forced through the

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2 pipes connected with the remote system, and air extraction
3 nipples are slackened off, which allows any air entrapped to
4 be let out."

5 Do you remember that testimony?

6 A Yes; I do.

7 Q Is that the procedure prescribed by the instruction
8 manual with respect to priming this system and also extract-
9 ing the air?

10 MR. KAIN: If your Honor please, I don't follow
11 the relevance. Mr. Pitt, if I understand this correctly,
12 was testifying as to what his procedure was on the north-
13 bound voyage in check these winches and winch controls for
14 operation or anticipated operation when the vessel came
15 into port.

16 There isn't any testimony, at least in this record,
17 that these systems were primed through on the day of this
18 accident, if that is what Mr. Lory is driving at.

19 MR. LORY: What I am driving at, your Honor, is
20 the fact that the procedure that was used to extra air from
21 the system -- and this is plaintiff's contention -- does not
22 conform, as described by Mr. Pitt, to the procedure as set
23 forth in the instruction manual.

24 THE COURT: Whether or not that is so, is there
25 any question that on the day of the accident or the day be-

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Ferenczy - direct

I will instruct you at the close of the case if there is any concern in that regard you have the right to have testimony reread to you so you can assure yourselves of what the witness did say.

Q Mr. Ferenczy, assume a competent winch operator. Assume further proper movement of the winch control handles to raise a car from the pier to a height of about six or seven feet above the ship's rail; assume further proper movement of the winch controls by the winchman to start to carry the car across the deck on a horizontal plane -- that is as described by the testimony already in the case, taking a strain on the up and down and slackening off on the Burton winch.

Assume further that suddenly the vehicle at the end of the fall suddenly swooped down across the deck, and the winchman says that the Burton winch suddenly ran uncontrolled and the up and down could not timely reel up the uncontrolled slack of the Burton.

Assume further that the winchman again, after, regained control of the draft and stopped it over the square of the hatch.

Do you have an opinion, sir, as to what would cause the winch, the Burton winch in this particular case, to react in this particular fashion?

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2 fore this system was out of phase, which is what I think we
3 have gotten at here?

4 MR. LORY: No. What we are saying --

5 MR. KAIN: There is no testimony in the record --
6 as I understand it, your Honor, the only person who testified
7 to a defect in these winches was Mr. Coppola, who limited
8 his testimony by saying that these winches at about 11:30 in
9 the morning, the handles of the remote control system were
10 very stiff and difficult to operate.

11 THE COURT: That is as I understand the testimony.

12 MR. KAIN: I don't believe there is any testimony by
13 anybody, at least in this record, that this system was
14 printed through on that date.

15 THE COURT: I so recall the testimony.

16 Ladies and gentlemen, I may say that in the course
17 of counsel and the Court discussion their respective recol-
18 lections of the testimony, in the final analysis it is your
19 recollection of the testimony that governs in this case,
20 since you are the triers of the facts.

21 The only purpose for our discussing it is to try
22 to arrive at whether a particular area of inquiry is rele-
23 vant. So you are not bound by anything we say as to whether
24 anything a witness may have said or not said was actually
25 said.

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Ferenczy - direct

MR. KAIN: If your Honor please, I object to the hypothetical question, one, as incomplete and, two, as partially inaccurate.

The testimony as I recall it by Mr. Coppola -- and it is omitted from the hypothetical -- is that this car was falling free through an arc with the winch in a neutral or stopped position on the Burton fall, and he testified, as I recall it, that he did not get or regain control of it but that the fall was stopped by the up and down, the length of the up and down fall, and when it came to the end of that, it continued to swing on out, held by the up and down fall.

So I object specifically on the record to the hypothetical question asked to the witness, in that it does not assume that the winch for the Burton boom, or the Burton winch -- that the control handle was in the neutral or stopped position during the course of this free fall, and, secondly, that it does not incorporate the witness' statement that the only thing that stopped the fall of this was the length of the up and down fall rather than his retaining control of the draft.

THE COURT: All right. Before I rule on this, ladies and gentlemen, we will take our mid-afternoon recess. You may retire to the jury room. If counsel will remain, we

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2 will see if we can cure this problem.

3 (The jury left the courtroom.)

4 MR. KAIN: I omitted one objection I have, your
5 Honor, and that is that the witness Coppola testified that
6 the Burton winch control was in the neutral position while
7 this car was allegedly falling through this arc and that
8 the up and down fall was in the full hoist position while it
9 was falling through.

10 He testified, sir, that neither worked and that it
11 was stopped, as I recall it by the -- in other words, when it
12 came to the end of the up and down fall, as it existed at
13 that time, it then swung under the head of the up and down
14 boom.

15 THE COURT: Mr. Greenspan, would you read me back
16 the hypothetical as posed by Mr. Lory.

17 (Record read.)

18 THE COURT: Mr. Kain, you take issue with about
19 thirty-three points there?

20 MR. KAIN: The witness, according to my recollec-
21 tion, your Honor, testified that as this car started across
22 the deck he was taking in -- slowly taking the strain on his
23 up and down boom, which is the one over the square of the
24 hatch, slacking slowly on his Burton boom, which is the one
25 that he brought the car up from the dock on; that as he

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2 started to Burton it across the deck and as it reached a
3 point about five or six feet above the rail, that is, the
4 bottom of the car above the rail, it suddenly swooped down.

5 The witness testified, as I recall it, that when
6 this car started to swoop he immediately put his Burton
7 winch control lever in the neutral position and raised his
8 up and down winch control lever to the full hoist position
9 but that nevertheless the wire continued to run out on the
10 Burton fall, and the up and down winch did not take in the
11 wire on the up and down fall and that he did not stop --
12 that he was unable to stop it, but that when it reached the
13 end of the fall, the up and down fall, that it could not
14 fall any more and that it swung out like a pendulum, came
15 back once or twice and then finally came to rest directly
16 under the up and down boom.

17 That is my recollection of what his testimony was.

18 THE COURT: Mr. Lory, I think there is a problem
19 with your Item Number 3, which is that there was the proper
20 movement of controls across the deck.

21 MR. LORY: Mr. Cohen had suggested winchman failure.

22 THE COURT: What?

23 MR. LORY: Mr. Cohen had suggested winchman failure,
24 your Honor.

25 MR. KAIN: Suggested what?

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MR. LORY: Winchman failure as the cause of this accident, so in order to properly phrase a hypothetical, I must assume that the winch controls were properly operated. Otherwise, I anticipate I will get another objection.

MR. KAIN: I submit to your Honor when a winchman has testified as to what he did with the controls, this should be incorporated rather than the conclusion.

THE COURT: I would think so, myself.

MR. LORY: I am merely trying to present the circumstances as described by Mr. Coppola as to the reaction of the draft at the time he was doing certain things, as I recall his testimony.

MR. KAIN: No --

MR. LORY: Mr. Kain's recollection of the testimony disagrees with hy recollection if it.

THE COURT: I don't think that as this draft swooped across the deck the testimony is that Mr. Coppola had his control handles in a normal moving position. My memory is that he put the Burton handle in neutral, and he had the up and down handle all the way in full raise --

MR. COHEN: Full hoist.

MR. LORY: After he started to spill.

THE COURT: After it started to spill.

MR. KAIN: He also testified, your Honor, as to his

subsequent movements and what he was doing before this and what he apparently considered normal, that he was operating these levers very slowly, both winches very slowly.

That would be what he considered to be normal.

But at the time he said this winch swooped, he said he immediately put his Burton winch control in the neutral position and put his up and down into full hoist.

That is my recollection.

THE COURT: My feeling is that if Mr. Lory wants to make his hypothetical as bareboned as possible, he is entitled to do it, as long as there is no fact that we understand that is not supported by the record, and you, of course, may cross-examine him about other facts.

But the area where I think your objection is well taken is --

MR. KAIN: I don't think, if your Honor please, the hypothetical incorporates the testimony, and he is asking the witness on the basis of what I consider to be absolutely erroneous --

THE COURT: I said where I agreed with you in your objection is that I think there is incorporated in his question a recitation of facts that are not supported by the record, specifically that there was proper movement of the controls across the deck.

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2 Now, that term would indicate that he was operating
3 them as he would have in a normal transfer.

4 MR. KAIN: That is correct, sir.

5 THE COURT: We do not have such testimony. We
6 have the testimony that as soon as this thing came across the
7 rail of the vessel, something happened, according to
8 Coppola, and he had an abnormal situation with his controls
9 from that point up until the cargo came to rest, after
10 swinging across the center of the square.

11 MR. KAIN: That is correct, sir.

12 MR. LORY: If your Honor please, the hypothetical,
13 if I remember it correctly, includes, "Assume further, pro-
14 per movement of the winch controls to start to carry the
15 cargo across the deck", to start.

16 THE COURT: Then what was the next one?

17 MR. LORY: The car across the deck on a horizontal
18 plane, that is, taking the strain on the up and down winch
19 and slackening off on the Burton winch.

20 "Assume further that the car swooped down across
21 the deck when, as the winchman says, the Burton winch sudden-
22 ly ran uncontrolled and the up and down could not timely
23 reel up the uncontrolled slack in the Burton and that there-
24 after the winchman regained control of the draft and stopped
25 it over the square of the hatch."

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2 THE COURT: I think the words "to start across
3 the deck" are probably all right. At the time that the draft
4 started across the deck I think the controls were in the
5 neutral position.

6 MR. KAIN: It is my recollection, your Honor, that
7 he said he had no trouble about raising it on the up and
8 down -- I am sorry -- on the Burton boom, using the Burton
9 winch, but that when it reached a point about five or six
10 feet above the rail or the bulwark, that he then started the
11 Burton, but it suddenly ran away, but not that it started
12 across the deck.

13 I have a distinct recollection that he said it was
14 over the ship's rail at the time he started -- at the time it
15 started running away from him.

16 THE COURT: Mr. Greenspan, could you read to me
17 that one phrase again.

18 MR. LORY: "Assume further, proper movement of the
19 winch controls to start to carry the car across the deck on
20 a horizontal plane, that is, taking a strain on the up and
21 down and slackening off on the Burton."

22 THE COURT: I think I will overrule the objection
23 and let you put the question as it was put, and then Mr.
24 Kain can cross-examine further.

25 All right. Let's take a recess, gentlemen, for

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2 another five minutes, ourselves.

3 (Recess.)

4 (Jury in box:)

5 THE COURT: Mr. Greenspan, if you would read back
6 the hypothetical question to the witness, please.

7 (Question read.)

8 A My only opinion on that is, the system, the remote
9 system contained air that would cause this rather unpredict-
10 able action of your pilot valve and, of course determining
11 the location of your selector valve.

12 What would happen in an instance like this --

13 Q Don't erase. If you have to erase I have to
14 photograph it. Do you want me to photograph it?

15 A Yes.

16 MR. LORY: May I have a moment, your Honor?

17 THE COURT: Yes.

18 MR. KAIN: Are these Polaroids?

19 MR. LORY: Yes.

20 Off the record, if we may, your Honor --

21 (Discussion off the record.)

22 THE COURT: Mr. Ferenczy, while we are waiting --

23 BY THE COURT:

24 Q You were asked whether you had an opinion. Now,
25 is this an opinion that you can state based upon your engin-

2 eering experience with reasonable certainty, or is it some
3 lesser degree of certainty that you place upon this opinion?

4 MR. LORY: Thank you, your Honor.

5 A I base this opinion on the --

6 Q No --

7 MR. KAIN: If your Honor please, may we first
8 find out whether he has an opinion with reasonable certainty.

9 THE COURT: That is what I am asking for. He has
10 already given it without objection, but in reflecting upon
11 the question, it seems to me he was merely asked whether
12 he had an opinion.

13 MR. KAIN: That is correct, your Honor. Yes.

14 THE COURT: There was no objection to it, but
15 upon reflecting upon it, I thought he should be asked the
16 quality of the opinion.

17 Is this one you can give us with reasonable certain-
18 ty, or is there some lesser quality about it?

19 THE WITNESS: I feel I can give it to you with
20 reasonable certainty, because I am dealing merely with the
21 characteristics of the two fluids, air and oil.

22 BY THE COURT:

23 Q You are saying that you are reasonably certain in
24 your mind that your opinion is a valid one?

25 A Yes. I feel that it is.

1 THE COURT: Off the record --

2 (Discussion off the record.)

3 MR. COHEN: Could we mark the photograph for
4 identification, your Honor?

5 THE COURT: Let's mark both of them for identifi-
6 cation.

7 Shouldn't they be marked in evidence? The origin-
8 al has been exhibited to the jury.

9 MR. COHEN: Yes.

10 (Plaintiff's Exhibits 13 and 14 were received in
11 evidence.)

12 MR. KAIN: Your Honor, it is my understanding that
13 the witness has now stated that he does have an opinion;
14 is that correct, sir?

15 THE COURT: He stated that the opinion that he has
16 given us was given by him with reasonable certainty.

17 THE COURT: And he is about to explain it.

18 Is that true?

19 THE WITNESS: Yes.

20 A Essentially, what you have in the transmitter --
21 and that is the device that is handled by the operator -- is
22 this:

23 You have the handle coming down, and it is attached
24 to a gear. To that gear is attached another gear that is
25

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just flattened out, so that gear looks like this (indicating).

The end of that flattened-out gear, more commonly known as a rack, would be the plungers that will transmit the impulse.

Now, this, of course, is surrounded by a cylinder. Now, coming down, joining directly with this line, will be this pilot valve that we discussed some time ago. I am just going to draw the end, because I think that is what certainly applies. It is directly connected -- to be in conformity -- I will just show dotted that phase adjustment valve. That is the phase adjustment valve. It is closed, normally.

Now, what would occur if we had -- if there were air on one side, or if there were more air in one side than the other, it is this:

"As this were moved -- say if he moved the handle in this direction (indicating), and let's say this is the lower, and, of course, this direction is going to be the hoist. If he were to move his handle in this direction, it would cause this little gear to move certainly in that direction, which would drive this plunger over, say, to here, and this plunger would now be here.

In racking his load, that is, according to the assumption you have given me, is that the yard boom has

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1 lifted vertically the load --

2 BY MR. LORY:

3 Q You are talking now about the Burton boom?

4 A Yes. The Burton boom has lifted the load. He is
5 not in the process of racking his load horizontally across
6 so that the load will be solitarily supported by the hatch
7 boom, the so-called up and down, so he can lower it.

8 Now, what he must do, of course, is, he must draw
9 up on the up and down and slacken off easily, you see, on the
10 Burtoning winch.

11 Now, let's say he moves it to this point (indicat-
12 ing). There happens to be a slug of air. In moving that
13 much, what he does, in effect, he compresses that slug of
14 air so that it occupies a smaller volume. In occupying a
15 smaller volume, you have to have an associated pressure in-
16 crease, but this pressure is not sufficient to move this pilot
17 valve in this direction, which will tend to send directional
18 oil to the other mechanisms in order to get the windlass to
19 unwind.

20 His next impulse would be to move that transmitter
21 handle a little more in that direction, because nothing
22 occurred. So he moves it a little more in that direction,
23 bringing this plunger over to such a point.

24 Now, he further tends to compress --
25

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2 MR. COHEN: If your Honor please, there has been
3 no testimony at all by the winch operator --

4 THE COURT: Yes. I was waiting for somebody to
5 rise.

6 There has not been any such testimony at all. In
7 fact, there has been just the contrary, Mr. Ferenczy, that
8 havine done Step Number 1, upon feeling that the cargo was
9 slipping away on the Burton fall, he then put it in the
10 neutral position.

11 THE WITNESS: I didn't come to the point where he
12 is slipping.

13 MR. LORY: If your Honor please, you are speaking
14 of -- We have a winchman here who does things unconsciously.

15 MR. KAIN: If your Honor please --

16 THE COURT: You have to see what the record is,
17 Mr. Lory.

18 MR. COHEN: Unless they had a private seance, I
19 don't know how he knows.

20 THE COURT: We have to deal with what the record
21 is. I don't think we can go by what our expert says a man
22 subconsciously would have done. We've got to go by what the
23 testimony is that the man said he did do.

24 MR. LORY: The testimony in the record from Mr.
25 Coppola was to the effect that he was Burtoning this particu-

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2 lar cargo across the deck, or he started to, and at this
3 particular point the immediate reaction that we have de-
4 scribed took place. Then, seeing this reaction, he there-
5 after moved the handle to the neutral position to stop.

6 THE COURT: I am not sure that it is valid to say
7 that where it was lowering too fast that he would have sub-
8 consciously lowered it further.

9 MR. KAIN: The only testimony that the witness
10 gave was that he was --

11 THE COURT: In any event, he will confine himself
12 to what the record shows and not what the man's impulse might
13 have been in his psychological assumption.

14 Q Can you explain the phenomenon, Mr. Ferenczy, with
15 respect to the assumption, or based upon the assumption, that
16 as the winchman started to slacken off on the Burton it
17 suddenly ran free?

18 A Yes. This is what I am attempting to do.

19 I am only -- I was describing the events to show
20 how this winch could run free despite the operational handl-
21 ing of the operator.

22 MR. KAIN: If your Honor please, my recollection
23 is that on this particular occasion there was no testimony
24 from Mr. Coppola that the winch controls failed to respond.
25 He said he was attempting to Burton it slowly across and that

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2 it suddenly ran free on him. That is my recollection of the
3 testimony.

4 THE COURT: That is my recollection, too.

5 MR. LORY: The witness is attempting to explain
6 why it would suddenly run free.

7 THE COURT: Consistent with the testimony, we have
8 gotten as far as the first movement in the lowering direct-
9 tion. Beyond that, the testimony does not support it.

10 THE WITNESS: I see. You are objecting to my
11 second step about the further moving.

12 THE COURT: Yes, because there is no testimony in
13 the record, sir, to support the further movement.

14 THE WITNESS: I see your objection.

15 Q Assuming, Mr. Ferenczy --

16 MR. COHEN: Under those circumstances, your
17 Honor, would it be proper to ask the witness if it now changes
18 his opinion which he gave before?

19 THE COURT: No. I think he has got to confine
20 the assumption, confine his opinion to that set of facts.

21 Q Mr. Ferenczy, assuming the presence of air in this
22 system, would that delay response of the --

23 MR. KAIN: If your Honor please, there is as yet
24 no testimony in this record yet that there was air in this
25 system at any time.

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2 MR. LORY: If your Honor please, the witness has
3 testified that the phenomenon would be caused by the presence
4 of air in the system.

5 THE COURT: Let me see the form of your question.
6 That may be the problem.

7 Q Assuming the presence of air in the system, Mr.
8 Ferenczy, would that delay the response of the winch in any
9 manner?

10 A Yes; it could.

11 Q Do you state that with reasonable mechanical certain-
12 ty?

13 A Yes; I believe I can.

14 Q Can you explain that to the jury?

15 A Yes. As I was saying, the initial -- if we had
16 this amount of air and in making the initial movement, say
17 to this point, the tendency is to move this fluid but not
18 to move this fluid until you had a compression of that air,
19 a reduction in volume with its associated increase in
20 pressure sufficient to overcome the resistance of this.

21 Now, as this started to move, with the vibrational
22 aspects associated with the handling of winches, that vibra-
23 tion could have entered into this, allowing this plug to be
24 reduced in its resistance or friction, causing this plug
25 to travel in a direction greater than what it was destined to

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2 move -- destined to do by this man's movement, which would
3 cause a rapid increase in a lowering rate, greater than what
4 Mr. Coppola had anticipated on his controls.

5 MR. KAIN: If your Honor please, I move to strike
6 the answer. One, unless Mr. Ferenczy can say "could have"
7 or "would have" rather than speculating -- the plug could
8 have traveled due to winch vibration -- and, secondly, there
9 is no testimony in the record as to what Mr. Coppola antici-
10 pated.

11 Mr. Coppola certainly didn't testify to this.

12 THE COURT: Mr. Greenspan, would you come to the
13 rail and read back the answer to me.

14 (Record read.)

15 THE COURT: I sustain the objection and strike the
16 answer, not only on your ground, Mr. Kain, but on the ground
17 it is not responsive to the question that was asked.

18 Q Mr. Ferenczy, you had expressed an opinion on
19 reasonable mechanical certainty that there was air in the
20 system and that air would be a producing cause of the
21 reaction of the winches as described by Mr. Coppola. Can
22 you explain to this Court and jury, please, how that would
23 be?

24 A The characteristic of air under compression -- of
25 course, it does give up a pressure. This pressure will act

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2 on this plunger, causing it to move. Where it differs from
3 the oil, the incompressible liquid, is that as soon as that
4 movement is finished -- for example, if this were to move
5 a half an inch, this pilot valve would move a half an inch.
6 Upon moving that half an inch, its pressure would be re-
7 duced to zero. There would be no impulse for further move-
8 ment.

9 Now, this is not necessarily true in compressing
10 air. If you build up a pressure here to sufficiently move
11 this, in moving the half an inch, say, you would still have
12 considerable pressure in your slug of air which could cause
13 further uncontrolled movement.

14 Q That would be further uncontrolled movement of
15 the valve --

16 A Of the pilot valve.

17 Q -- which would, in turn, relay itself to the
18 main system?

19 A Yes.

20 Q Mr. Ferenczy, what does priming the system mean?

21 A Priming the system. The term is not often used in
22 hydraulics, but with regard to pumps, when you prime a pump,
23 it indicates that you fill, totally fill the cavity of the
24 pump with liquid.

25 So to prime a system would infer that you are

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totally filling this system with liquid.

Q Assume, Mr. Ferenczy, that the method used to prime this system as described by Mr. Pitt was to arrive at the winch stanchion with a pump-type apparatus and to pump oil into the system and that this procedure was followed on the northbound leg of the voyage. What would the effect of this particular procedure be with respect to the system?

MR. KAIN: If your Honor please, I believe the testimony of Mr. Pitt refers only to the remote control system, and it is not designated so in the assumption.

MR. LORY: I am only referring to the remote control system.

THE COURT: On that basis, go ahead.

A Would you reword that question again, sir?

Q What would be the effect and purpose of taking a pump-like apparatus --

THE COURT: Please read the question. Let's have Mr. Greenspan read the question, and, Mr. Ferenczy, confine this to the remote control system.

All right.

(Question read.)

MR. KAIN: I have another objection, your Honor, that it did not occur at the time Mr. Pitt was talking of the control station and not the winch. I believe that is

his testimony as to where they primed.

MR. LORY: He was talking about the control station, was he not?

MR. KAIN: The question says "the winch" -- "to arrive at the winch".

MR. LORY: Let me rephrase it.

THE COURT: Mr. Lory be very narrow, because alternatives crawl into the question, and then we have a flaw.

MR. LORY: I am sorry, Judge.

Q Mr. Forenczy, I will read to you from page 24 of Mr. Pitt's transcript, at line 22:

"Q Will you please tell me what you mean by priming through? What did you do in order to prime through the remote control system?

"A A little hand pump is attached to the control stand, and this light hydraulic fluid is forced through the pipes connected with the remote system, and air extraction nipples are clackened off, which allows any air entrapped to be let out."

Now, sir, what is the purpose and effect of this particular procedure as described by Mr. Pitt?

A The procedure is incomplete.

Q When you say "incomplete", what do you mean?

1
2 A I mean that it could not effectively remove the
3 air from the system.

4 MR. KAIN: If your Honor please, I object to the
5 answer as not responsive to the question.

6 THE COURT: I think I will allow it. Go ahead.

7 A (Continuing) May I read --

8 THE COURT: Mr. Ferenczy, you said it was incom-
9 plete. In what manner was it incomplete?

10 Q On what do you base it?

11 A I am basing it on the advices given in the
12 instructional manual for the removal of air, the extraction
13 of air.

14 THE COURT: I am assuming this is based upon your
15 knowledge of the field, in the field of hydraulics. Now,
16 in what manner did you regard it, as one versed in this
17 field, as being incomplete?

18 THE WITNESS: Well, I am basing my immediate
19 answer to this question on what is written in the builders'
20 and designers' instructional manual.

21 MR. KAIN: I suggest, then, that is not Mr.
22 Ferenczy's opinion.

23 THE COURT: Yes. I agree, and I will strike the
24 answer.

25 Q Mr. Ferenczy, may we have your opinion first, and

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2 if it is supported by the manual, tell us so.

3 THE COURT: Gentlemen, would you come to the side
4 bar for a moment, please.

5 (At the side bar:)

6 THE COURT: I may be missing something, Mr. Lory,
7 but the problem I see with all of this testimony -- and
8 maybe I am missing something -- I see it to be wholly irrele-
9 vant, because this vessel was in that port for two days, and
10 that equipment was used continuously, as I understand it, for
11 two days.

12 It was in synchronization. We had no complaints
13 whatever of any swooping of any cargo. We had some testimony
14 about handles that were stiff and hard to run, and I just --
15 Frankly, I don't see how this is relevant, let alone that
16 this witness is saying it is incomplete because something
17 in the manual doesn't speak of it, and we cannot tell from
18 reading this deposition whether Mr. Pitt used the equalizer
19 lever during the course of this or not. It doesn't say.

20 MR. KAIN: He is being asked about his checks on
21 the northbound leg of the voyage, and there is nothing there.

22 THE COURT: And that seems to me so remote in time,
23 after two days' use of this, as to have absolutely no eviden-
24 tiary value for this jury whatsoever.

25 MR. LORY: If your Honor please, we predicate our

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particular case upon the fact that the frequency with which this system had to have oil pumped into it indicates that the system was leaking, and the leaking of this system itself would invite the presence of air in the system.

THE COURT: Then let's ask him that.

MR. KAIN: There is no testimony about that.

THE COURT: They are correct in that. There is testimony that --

MR. LORY: One is different from the other. The fact that the system required the introduction of additional fluid indicates that the fluid was going some place. If the system is filled and thereafter you must now add more fluid, and this fluid is not being consumed, therefore it means that the fluid is going some place.

MR. COHEN: He only talked about a stiff handle. He said nothing about any leaking.

MR. LORY: Whatever he talked about, there is testimony in the record from Scotto, for example, that the man came around three times; from Coppola that he came around at eleven-thirty.

THE COURT: You have a little problem there, because Coppola said he came once, and Scotto said he came three times.

MR. KAIN: Scotto said he came once, on his original

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2 deposition.

3 THE COURT: You didn't ask him that.

4 MR. KAIN: Yes; we did.

5 THE COURT: That is in the record?

6 MR. KAIN: Yes.

7 THE COURT: You have a credibility problem not only
8 with Scotto but as between the two witnesses, as to how
9 many times he came. But, be that as it may, these men, who
10 are experienced winch operators, were using this machinery
11 hard and heavy. I just don't see what you are trying to get
12 at on the northbound voyage here is going to be relevant.

13 MR. LORY: The only thing that I am trying to do
14 is to show that the procedure of maintenance was not proper
15 and did not conform to the specifications as set forth by
16 the manufacturer.

17 THE COURT: The specifications are in evidence.
18 Unless this man can add his expert statement to that, I am
19 not going to let him say that it was incomplete because he
20 read the manual and the manual says it was incomplete.

21 MR. LORY: I twisted it around to state, "Is it
22 your opinion and is it supported by the manual?"

23 THE COURT: I think he said in response to my
24 question that he didn't have any opinion except insofar as
25 he got out of the manual.

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MR. COHEN: He said this is a closed system, with no way for air to escape. So if air was there before it manifested itself and it worked without any problems after this accident as well, where did that air go to?

THE COURT: That is a matter of argument.

MR. LORY: You can have a bubble of air in your blood system. If it is not in a vital area it is of no effect.

THE COURT: The reason I brought you to the side bar was that I thought I could perhaps prevail on you that this whole area of inquiry on the northbound voyage was irrelevant. Maybe I cannot.

In any event, I am not going to let him testify that the basis for his opinion that the procedure was incomplete was from what he read in a manual, because that's already in evidence. He adds nothing to it by his testimony.

MR. LORY: All right.

(In open court:)

Q Mr. Ferenczy, with respect to a hydraulic system, the fact that oil has to be added at intervals: does that have any significance for you? Does that have any meaning for you?

A The meaning it has is that there must be a leakage of oil out of the system somewhere over a period of time.

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2 Q If there was in fact leakage of oil, what would
3 be the effect of the leakage of oil until the oil was re-
4 placed?

5 MR. COHEN: I am going to object. There has been
6 no testimony by anybody of any leakage of oil here.

7 THE COURT: Well, he is now testifying as an expert
8 based on a hypothesis.

9 MR. COHEN: He is building inferences on inferences,
10 however, your Honor.

11 THE COURT: One inference. He said there is
12 testimony that oil was put in. He said to him that would
13 mean oil went out some place. He is saying if that were
14 the case, what happened to it?

15 MR. COHEN: All right.

16 THE COURT: That being the question, I will allow
17 it.

18 MR. LORY: Can we have the last question read,
19 please?

20 (Question read.)

21 A Some substance would have to replace the oil.

22 Q Do you have an opinion, sir that you can state
23 with reasonable certainty, as to what that substance would
24 be?

25 A In all probability, it would be air.

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2 Q You state that with reasonable certainty?

3 A Yes.

4 Q In order to remove any air that is in the system,
5 what procedure would you, with your knowledge and experience
6 in hydraulics, follow?

7 MR. KAIN: If your Honor please, I object to the
8 question unless, one he designates the system and, two, I
9 object to the irrelevancy, since there is no testimony to
10 that effect.

11 THE COURT: Mr. Greenspan, read it back to me,
12 please.

13 (Question read.)

14 THE COURT: This is an assumption that assuming
15 there were air --

16 MR. KAIN: First of all, your Honor, we are speak-
17 ing of more than one system. We have been speaking of main
18 and remote systems. Second, your Honor is correct that it is
19 on the assumption of air, and I object to it on the ground
20 that there is no testimony as yet in this case that there
21 was air in the system.

22 THE COURT: It is his opinion that in all probabil-
23 ity there was air, and the validity of his opinion, of
24 course, is a matter of testimony.

25 I think, however, a further foundation should be

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2 laid as to exactly what system and the witness' knowledge
3 of that system and the knowledge of the fact that there is
4 a procedure for the removal.

5 MR. LORY: Your Honor, I have been speaking only
6 of the remote system throughout. Once we got through with
7 the general description of how the entire three systems
8 operate, I have confined myself to the remote system.

9 THE COURT: Mr. Ferenczy, do you know of a pro-
10 cedure to remove air from a remote system of this kind?

11 THE WITNESS: Yes; I do.

12 THE COURT: What is that procedure?

13 THE WITNESS: The procedure is to establish a flow
14 through the system in order to carry out any entrained air,
15 if it exists. If you are going to establish a flow, you can't
16 put oil in unless you have some exiting device.

17 Now, these small valves that we were speaking of,
18 they must be opened. Now, what is going to cause a flow
19 through that valve? Remember now, it's -- it's a type of
20 valve, these air extraction valves, that can allow a flow
21 in or out, depending upon the difference in pressure between
22 the outside of this cylinder and the inside.

23 In order to preclude any possibility of having en-
24 trapped air by having air work into the system while you are
25 attempting to remove the air, the procedure is to make sure

1 that this valve -- and I might draw one here --

2 THE COURT: Is that where it is?

3 THE WITNESS: Yes. There are two valves. There
4 is a valve in either side.

5 So if this valve is opened, the accepted practice
6 in the field is to connect with with a vinyl tube, lower the
7 end of the tube in a container containing the hydraulic
8 fluid.

9 Now, as pressure is applied to the system, with
10 some type of a pumping device or a gravity feed device, what
11 occurs, of course, is that as the air collects at this high
12 spot it is carried off, and you can very clearly see the
13 globules of air entrained in the oil as it passes from the
14 system, the remote control system, to this container with
15 oil.

16 If for any reason -- if you had a reversal of
17 pressure whereby the pressure outside the system was greater
18 than inside, and if you had a flow, the only substance that
19 could flow back into the cylinder would be oil, because of this
20 oil seal you have in this receptical.

21 Q Mr. Ferenczy, assume a system with some air en-
22 trapped in it, that is, a remote system. Can such a system
23 operate normally for a period of time and suddenly function
24 abnormally? Do you have an opinion as to that, sir, that
25

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2 you can tell us with reasonable certainty?

3 A I would have to qualify "suddenly", because, as
4 the amount of air increases in the system, the system will
5 become more sluggish and tend to become more inoperative.
6 It is a growth procedure.

7 THE COURT: You say it is a growth procedure?

8 THE WITNESS: It would be a growth procedure, air
9 leakage into a system, unless you had a complete failure
10 of the system, a breaking of a part.

11 Q The procedure you have just described to us is a
12 system that is used to prime through the remote control
13 system, is it not?

14 A True.

15 Q That is the system that would be used in order
16 to prime and extract air from the system; is that not true?

17 THE COURT: Mr. Lory, I think he has given that
18 as an answer, so let's go on.

19 Q Does the instruction book describe a procedure to
20 be followed in order to remove air -- to prime the system?

21 A Yes; it does.

22 MR. KAIN: Your Honor, beyond the "yes", I think
23 the instruction book speaks for itself.

24 THE COURT: I agree. I sustain the objection
25 further, unless this is a foundation for going on to further

1 RGP 67 Ferenczy - direct

2 testimony of this witness.

3 Q If the procedure that you described is not fol-
4 lowed, what is the expected result?

5 A With no --

6 MR. COHEN: I am not certain what that means,
7 your Honor. Followed at what time?

8 Q If the procedure of priming --

9 MR. COHEN: Is this on the northward leg
10 of the voyage?

11 THE COURT: I am not sure, myself. I think your
12 objection is well taken. I will sustain it as to form.

13 Go ahead.

14 Q If the procedure that you described for priming is
15 not followed, can something be anticipated?

16 Do you understand my question?

17 MR. COHEN: That was the same question.

18 MR. KAIN: Is something being anticipated?

19 THE COURT: Yes. I fear there are too many facts
20 missing here, Mr. Lory, to make this an answer that is
21 meaningful.

22 Q What would be the result of not following the
23 procedure that you have described with respect to priming
24 the remote system?

25 MR. KAIN: It is practically the same question,

1 RGP 68

Ferenczy - direct

2 your Honor.

3 THE COURT: I will sustain the objection.

4 What other facts must the witness know to give
5 an answer, Mr. Lory?

6 MR. LORY: Either I am dull, your Honor -- but at
7 the moment it doesn't hit me.

8 THE COURT: It seems to me there has got to be
9 some quantum of air existing in there, a percentage.

10 Q Assume, Mr. Ferenczy, there is some air in the
11 remote system, and the procedure that you have described is
12 followed. Would the air be completely extracted?

13 A The air would be completely extraced if visibly
14 you would note solid fluid being discharged through the
15 vinyl tubing.

16 Q Is the procedure described by Mr. Coppola with
17 respect to the pumping of oil into the system --

18 THE COURT: Mr. Pitt, you mean.

19 MR. LORY: Pardon?

20 THE COURT: You mean Mr. Pitt.

21 MR. LORY: Mr. Pitt and Mr. Coppola.

22 MR. KAIN: I don't believe Mr. Ferenczy heard his
23 testimony.

24 THE COURT: He said he was some distance away,
25 having a cigaret.

Q Is the procedure described by Mr. Pitt sufficient to remove air that may be in the remote system in the event that there is air in the remote system?

A No.

Q In what respects is it insufficient?

A Because he cannot visually establish that all air has been removed. There is no certainty that air cannot enter through this open space, the air extraction valve.

Q Mr. Ferenczy, is it necessary to open the air extraction valves at the time that oil is pumped into the system? I am speaking of the remove system.

MR. KAIN: May I have that question repeated, please?

THE COURT: Surely.

(Question read.)

THE WITNESS: I may answer this?

THE COURT: Yes; you may answer.

A No; it is not possible to pump oil into the system with all the extraction valves closed.

Q Then in order to use this bomb apparatus that has been described to you, it would be necessary to open some or all of the air extraction valves; is that not true?

A Yes.

Q Would the elements or weather or the environment

1 RGP 70 Ferenczy - direct

2 have any effect on this procedure, particularly during
3 circumstances when it is done on the northbound leg of a
4 voyage?

5 A No.

6 MR. KAIN: If your Honor please, the northbound
7 leg of a voyage from South Africa --

8 THE COURT: His answer is no.

9 Q Is this system affected by the elements, the remote
10 system on these winches?

11 A The seals over a period of time could be affected.

12 MR. KAIN: If your Honor please, I move to strike
13 the answer. There is no testimony in this case as to that.

14 THE COURT: Yes; I agree. There is no such
15 testimony, and the answer is stricken, and you are instruct-
16 ed to disregard it.

17 Mr. Lory, are you getting to the end of your
18 direct with Mr. Ferenczy?

19 MR. LORY: Just about, your Honor.

20 Q Mr. Ferenczy, is there a positive way to confirm
21 the total removal of air in the remote system?

22 A As I mentioned, by flushing your system, bringing
23 your oil in through a pump, flushing it out through the
24 air extraction valves and noting the quality of oil that is
25 coming out.

RGP 71

Ferenczy - direct

Q Mr. Ferenczy, you described the system for us. Do you have an opinion, sir, with respect to this system after having studied the plans and the instructions, as to how air could leak into the remote system?

MR. KAIN: If your Honor please, aside from being repetitious, we have been all through this, and there is certainly nothing in this record to date, at least, that would permit speculation as to air leaking into the remote system.

THE COURT: Yes; I agree with you. I will sustain the objection.

MR. LORY: If I may have a moment, your Honor.

THE COURT: Surely.

(Pause.)

THE COURT: Mr. Lory, I am going to change my mind. I will permit the witness to testify as to his opinion. Not that there is a knowledge that there is no fact in the record to permit this, but his opinion.

I permitted him to say that it is his opinion that there is air there.

MR. LORY: I didn't hear the last, your Honor.

THE COURT: I said I have permitted him to testify that in his opinion there was air in the system. I emphasized it was his opinion. I think it necessarily follows

1 RGP 72 Ferenczy - direct
2 that he must be permitted to give an opinion, if he can with
3 reasonable certainty, as to how that air got into this
4 system.

5 Q Mr. Ferenczy, can you give us or explain to us
6 with reasonable mechanical certainty how that air got into
7 the remote system?

8 A Having not seen the actual system, the only comment
9 I can make is that it came into --

10 MR. COHEN: I object to this. He was asked if he
11 can tell us. It calls for a yes-or-no answer.

12 THE COURT: I agree.

13 A No.

14 MR. COHEN: He says he cannot.

15 THE COURT: Fine.

16 Q Mr. Ferenczy, do you have an opinion as to what
17 would prompt the need for additional hydraulic fluid in the
18 remote system?

19 THE COURT: I think that is --

20 MR. KAIN: If your Honor please, I don't think
21 there has been testimony in the record yet, at least, that
22 there was a need for additional hydraulic fluid in the
23 system.

24 THE COURT: And to the extent --

25 MR. KAIN: Unless that is conjecture that that is

1 RGP 73 Ferenczy - direct

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2 what Mr. Coppola was talking about.

3 THE COURT: We went over this quite a bit, and I
4 will sustain the objection.

5 Q Mr. Ferenczy, with respect to the operation of
6 these particular winches, is it essential for the proper
7 operation of them that you get an immediate response from the
8 control handle that you have indicated there, telegraphed
9 to the control or valve or lever or whatever you want to call
10 it on the main system?

11 A I lost the intent of your question. I am sorry.

12 Q Is it critical to the operation of these winches
13 that whatever movement you have on the control handle on
14 the stanchion that we have shown in these pictures -- that
15 you get immediate reaction at the winch, the main winch
16 system?

17 A Yes.

18 Q And that the purpose of adding fluid to these
19 winches and that the purpose of putting them in phase is to
20 insure that this immediate reaction is felt from the remote
21 station at the main station?

22 A Yes.

23
24 Q In the event that there is any air entrapped in
25 the system, that would impede this particular purpose, that

1 RGP 74 Ferenczy - direct

2 would obstruct this particular purpose, you would not get
3 an immediate reaction from the remote station at the main
4 station?

5 A Yes.

6 Q Would the presence of air in the system result
7 in an out-of-phase operation?

8 A Yes.

9 Q What is the meaning of an out-of-phase operation?

10 A Where the receiver does not mimic the transmitter.

11 Q Another way of saying it would be that they are
12 not in synchronization one with the other?

13 A True.

14 Q So it is clear in the minds of the jury, we have
15 two such systems with respect to these winches, one for the
16 Burton winch and one for the starboard winch; is that not so?

17 A Correct.

18 Q I am sorry. The Burton and the up and down.

19 MR. LORY: Thank you, Mr. Cohen.

20 Q (Continuing) So the record is clear and the jury
21 understands, one, the Burton winch system has no connection
22 with the up and down winch?

23 A I would assume that, yes.

24 MR. LORY: I have nothing more, your Honor.

25 THE COURT: All right.

1 Now, ladies and gentlemen, we will stand in recess
2 until ten o'clock in the morning. You are excused. Do not
3 speak with each other about the case or with anyone else,
4 and continue to keep an open mind.
5

6 Good night.

7 (The jury left the courtroom.)

8 THE COURT: I assume you want to commence cross-
9 examination at ten in the morning.

10 MR. KAIN: If it is possible.

11 THE COURT: Mr. Ferenczy, you are available at
12 ten in the morning?

13 THE WITNESS: I can't make it quite at ten, sir,
14 but I will try.

15 THE COURT: What time can you make it?

16 THE WITNESS: It would be more in the neighborhood
17 of ten-twenty.

18 THE COURT: Would you, Mr. Kain, quickly tell Mr.
19 Dorset to tell the jury to come at ten-twenty, and we will
20 resume at ten-twenty.

21 (Adjourned to May 23, 1974, at 10:00 a.m.)

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1 rgrm 1

2 Maria Iannuzzi

vs.

68 Civ 2829

3 South African Marine Corp.

vs.

4 International Terminal
Operating Co., Inc.

May 23, 1974

10:30 a.m.

7 (Trial resumed.)

8 (In open court; jury present.)

9 THE COURT: Good morning, ladies and gentlemen.

10 MR. LORY. May we have a side bar before we start?

11 THE COURT: All right.

12 (At the side bar.)

13 MR. LORY: If your Honor please, I would ask you to
14 reconsider an earlier ruling with respect to Mr. Ferenczy's
15 testimony, taking into consideration the facts in the case
16 that would indicate that we have a winch where there are no
17 markings and no stops and the only way to operate it is to
18 move the lever in one continuous motion until such time as
19 you see some movement at the other end with respect to the
20 draft, then Mr. Ferenczy was proper in trying to describe
21 the situation with respect to what might have happened or
22 did happen within the system, and when the objection was made
23 your Honor had indicated that there was nothing in the record
24 to indicate a further movement. I submit to your Honor that
25 it was one continuous movement and all the witness was trying

1 rgrm 2

2 to do was to explain to the jury what would happen within the
3 system after the lever progressed in motion. In other words,
4 as I recall the testimony, Mr. Coppola had testified that he
5 had it in the hoist position --

6 THE COURT: I remember the place. Mr. Lory, let's
7 put it this way: I would not change my ruling on his state-
8 ment that if a person pushed it he would then subconsciously
9 push it further, because there is no testimony to support
10 that and that is pure speculation.

11 MR. LORY: That I accept.

12 THE COURT: That was the only question I was asked
13 to rule on, quite frankly. Let's see how this cross
14 examination goes. It may well be that upon redirect it may
15 be appropriate to consider some testimony as to if a person
16 had pushed it further, what might have happened. I want to
17 give some thought to that.

18 MR. LORY: All right.

19 THE COURT: Make your application again to me at
20 the close of the cross, if you will--

21 MR. LORY: The second thing I have, and there may
22 be some argument about it is, and I think it should be out of
23 the hearing of the jury --

24 MR. COHEN: Could we reserve this until the end of
25 the cross? It is not with respect to this witness.

1 rgrm 3

Ferenczy-cross

2 MR. LORY: This would relate to the number of hours
3 worked and the hourly rate a hatch boss would receive.

4 THE COURT: All right.

5 (In open court.)

6 E D W A R D F E R E N C Z Y , resumed.

7 THE COURT: Mr. Kain, you may proceed.

8 CROSS EXAMINATION CONTINUED

9 BY MR. KAIN:

10 Q Mr. Ferenczy, would you look at this diagram which
11 is on the blackboard before us, the one you made yesterday
12 afternoon.

13 MR. LORY: Excuse me, your Honor, I have a picture
14 of it. If we could mark it, then the record would show what
15 diagram we are talking about.

16 THE COURT: Why don't you mark that for identifica-
17 tion or in evidence, actually, and then maybe put the same
18 letter on the blackboard and that will enable Mr. Kain to
19 keep the exhibit letter in mind, or number.

xx 20 (Plaintiff's Exhibit 15 received in evidence.)

21 Q Will you look at this diagram which you made
22 yesterday, Mr. Ferenczy, which is Plaintiff's Exhibit 15 in
23 evidence. Would you explain to me again -- you can come down
24 to the drawing if you need to -- the effect you say this air
25 in the system that -- I believe you indicate the air by the

1 rgrm 4

2 small pocket like in there; is that it?

3 A Yes.

4 Q Could you explain to me again the effect you say
5 this air would have on the operation of this system.

6 A Yes, I believe I can do that. Assuming, again, that
7 this is a quantity of air, and assuming that he moves this
8 plunger in a direction to decrease this volume, or causes this
9 oil to flow towards the pilot valve. In doing that it will
10 come upon this section of air. Before it will move this
11 amount of oil it will compress.

12 Q In order to compress, will it be necessary or would
13 it be necessary to increase the pressure of the oil to
14 compress the air?

15 A You see, the point is this: He would have to make
16 a greater movement here, you see, because of this springness
17 of the area, the characteristic of the air, in order to get
18 a movement on his pilot valve.

19 Q Do you mean by that that he would have to increase
20 the pressure on the air bubble or the air pocket?

21 A He would have to increase his movement, which could
22 increase the pressure in your air, yes.

23 Q How does it increase the pressure, could you tell
24 me that?

25 A By decreasing the volume. The pressure will vary

471a

Ferenczy-cross

1 rgrm 5

2 inversely with your volume. In explanation, if your volume
3 decreases, you will have an associated increase in pressure.

4 Q We are talking here, are we not, of a remote system?

5 A Yes, we are.

6 Q That is a manual system. Are there any pumps
7 that serve to increase or decrease pressure in this sytem?

8 A No, there is not.

9 Q I think you used the expression oscillating, this
10 liquid.

11 A Yes, that is so.

12 Q Does the pressure remain constant when you move
13 these levers in one direction or another?

14 A It can. Yes, it would come up to a value such as
15 this pressure operating on this area would be of sufficient
16 force to overcome the friction in this plunger. So, there-
17 fore, it would ascend to that level and then the pressure
18 would remain constant as the movement occurs.

19 Q Did I understand you correctly to say that in
20 your opinion this could cause the erratic motion of this
21 draft of cargo, this car on the cargo hook --

22 A Yes.

23 Q As described to you by Mr. Lory yesterday?

24 A Yes, it could.

25 Q How would it case it, sir?

1 rgrm 6

Ferenczy-cross

2 A Well, it would cause it in this way. Might we
3 consider this side as being solidly oil and may we consider
4 this side as having the section of air. If this side is
5 solidly oil and you were to make a corresponding movement,
6 because this liquid cannot be reduced in volume, it must have
7 an appreciable, the same movement in this plunger. But here
8 is the grand part of it all. As soon as this movement here
9 mimics this, the pressure immediately drops. With your air,
10 to get a movement here, it does not at all indicate that that
11 pressure in the air drops because it has expansive qualities.
12 So here lies the treachery of the system.

13 Q Isn't it expanding against the same pressure if the
14 pressure remains constant in the system?

15 A The pressure would have to drop with any expansion
16 of this air. So now this pilot valve could remain fixed,
17 because with this air expanding the pressure has dropped
18 somewhat, you see. Now, what could cause this valve to move
19 with this slightly decreased pressure, and the only way that
20 that could occur is to relieve or diminish the frictional
21 aspects in this pilot valve. That could quite easily occur on
22 this piece of machinery due to the vibration characteristics
23 of the running gear.

24 Q What vibration characteristics are you referring to?

25 A I am referring to the vibration as set up. As the

1 rgrm 7

Ferenczy-cross

2 cable is being wound onto the drum or unwound onto the drum
3 causes a considerable vibration.

4 Q But this is the remote system and not the winch
5 system; is that correct?

6 A That is correct, but this system is attached to a
7 winch house to which the base, the foundations of the wind-
8 lasses are attached and, of course, these vibration character-
9 istics are very easily transmitted throughout the whole
10 section.

11 Q Let me also go back -- you can resume the stand
12 if you will, sir.

13 In recalling what you said yesterday, if I misquote
14 you, will you let me know?

15 A Yes.

16 Q It was my understanding that you said that the
17 hydraulic motor in this particular system -- I am referring
18 now to the winch system -- would, in lifting a draft, the
19 bypass valve would close and there would be one chamber
20 utilized in the hydraulic motor, and if this one chamber was
21 inadequate to lift, say, suppose for example we had a five
22 ton load on this winch, that the single chamber would be
23 inadequate and that if the single chamber was inadequate you
24 would have a second port open and you would get more fluid,
25 and if that was still inadequate you would get a third chamber

1 rgrm 8

Ferenczy-cross

2 open and that would give you maximum lift; is that what you
3 said, sir?

4 A Yes, with a slight exception. You mentioned more
5 fluid. You would not get more fluid. You would get this
6 fluid to act on a greater area of blades, or a greater number
7 of blades and this would give you the greater torsion, the
8 turning movement necessary to lift the heavy load.

9 A If, for example, we had a constant speed pump --
10 is that correct?

11 A Yes.

12 Q And it is a constant speed pump because it has a
13 constant speed AC motor; is that correct?

14 A That's correct.

15 Q Let's say with using one of these ports open, if
16 this constant speed pump would, for example, put, say, 10
17 gallons through per minute, with the one port open you would
18 have 10 gallons flowing through acting on these veins and
19 moving this motor at a certain speed; is that correct?

20 A That is correct.

21 Q I am talking now about possible maximum speeds;

22 A Yes, that is correct.

23 Q Now, if you opened the second port you would still
24 have 10 gallons, but it would split between the two ports;
25 is that correct, so it couldn't drive it as fast as if you

1 rgrm 9

2 had a single port; is that correct?

3 A That is correct.

4 Q If you had yet a third port open you would then
5 have your 10 gallons split among, in effect, three ports,
6 wouldn't you?

7 A That's correct.

8 Q So that would be the slowest speed?

9 A Yes.

10 Q If I misquote you, tell me. I understood you to
11 say this is why, for example, a maximum speed of this winch
12 -- and I think you quoted page 18 of the manual, that if you
13 had, say, I think it was 36 meters per minute on maximum load
14 as a rope speed, you pointed out, I think, that it went to
15 110 at the light load as compared to the 36; is that correct?

16 A I don't recall the exact figures.

17 Q In any event, at the maximum load, the rope speed,
18 the speed at which this will rotate, this wire on the drum
19 will move is 36, will you assume with me --

20 A Yes.

21 Q And it is much greater at a light load; is that
22 correct?

23 A Yes.

24 Q You also told us yesterday, if I understood you
25 correctly, that this hydraulic motor was connected to the

1 rgrm 10

2 winch arm; is that correct?

3 A Yes, it is.

4 Q Is that connected in this particular system by any
5 type of gearing, reduction gears or anything of that sort,
6 or is it a direct connection to the winch?

7 A No. In reading through the material that was given
8 to me, there was no remarks about a reduction gearing system,
9 but looking at the plans it appears that there was a gear
10 reduction. I would assume that there was a gear reduction
11 to it, because for one thing this is the usual way of hooking
12 up a windlass.

13 Q This, as I gather from what you say, is conjecture,
14 you cannot definitely establish that; is that correct?

15 A From looking at the plans, pretty much I can
16 establish that.

17 Q Now, you told us yesterday, I believe, that -- and
18 you told us again this morning, that in your opinion an
19 erratic movement of this car, as described to you by Mr. Lory
20 in his hypothetical question, that you could state with
21 reasonable certitude as an engineer that this was the result
22 of air in the system; is that correct?

23 A Yes, I can do that.

24 Q Could it also result from erratic movement of winch
25 handles by the operator; could he get this same effect?

1 rgrm 11

2 A Yes, it could.

3 Q Are you familiar with cargo winches, generally,
4 Mr. Ferency?

5 A From my sailing I am acquainted with them.

6 Q Have you ever operated winches, cargo winches?

7 A Yes, I did.

8 Q Have you operated electric cargo winches?

9 A Years ago I was a trial engineer for Bethlehem Steel
10 and it was part of our duties to run tests. Now, I am saying
11 this to qualify my operational point. When we operated it
12 was merely to test the machinery.

13 Q I understand, but you are familiar with the
14 characteristics of electric cargo winches; is that correct?

15 A Yes, but I did not operate as a stevedore.

16 Q I understand, but you are familiar with their
17 characteristics?

18 A Yes.

19 Q Now, it is true, is it not, that an electric cargo
20 winch has certain relays built into the system, does it not?

21 A That is correct.

22 Q If, for example, I am using an electric cargo winch
23 and I am standing at the master control and I move this master
24 control from the neutral or stopped position, the vertical
25 position to either the full hoisting or the full lowering

1 rgrm 12

2 position, what happens? Does it immediately go into the full
3 hoisting or the full lowering position? I am referring now
4 to electric winches.

5 A No, it does not immediately go in. There is a
6 build up, you see.

7 Q It goes through certain relays, time relays?

8 A A series of time relays, yes.

9 Q It has to go through -- say, for example, there are
10 five hoisting or lowering positions on an electric cargo
11 winch. No matter what you do with that lever you cannot put
12 it to full speed, can you, unless it first goes through this
13 motor -- it first goes through these various time relays and
14 builds up to full speed; is that correct?

15 A True.

16 Q Is that characteristic true of this hydraulic type
17 winch?

18 A In a modified sense. It is true here because we
19 have our three chambers and the oil passages to these -- say
20 the second and third chamber is a function of the pressure
21 build up in the hydraulic oil system. So if you were lifting
22 this excessive load, you see, you would have to go through
23 these three stages, but if you had a light load and you moved
24 your handle to the full position, she would go to her full
25 speed immediately.

1 rgrm 13

2 Q Let's assume I have a two-ton load.

3 A Yes.

4 Q I am referring now to this particular type of
5 winch. I move my winch control to maximum speed.

6 A Yes.

7 Q I am referring now from the position on the dock.
8 Would this winch go immediately to maximum speed?

9 MR. LORY: I will object, your Honor, unless we
10 establish the capacity of the winch that is involved.

11 MR. KAIN: I am referring to this particular winch
12 which he testified to, Mr. Lory.

13 THE COURT: Go ahead, Mr. Kain.

14 Q Would it go to maximum speed?

15 A Yes, it would.

16 Q That would occur much more rapidly and much faster
17 than the same effect than if you were hoisting a two-ton
18 load with an electric winch, isn't that true?

19 A It could.

20 Q Isn't it true that winches of this type, hydraulic
21 winches such as the Fukushima winch on the Huguenot, that
22 these are much finer and much more responsive than electric
23 winches?

24 A By nature of the design, yes.

25 Q I am assuming that the winch is operating as it is

1 rgrm 14

2 designed to operate. Will you assume with me there was
3 testimony by the winch operator that the trouble he explained
4 with this winch at about 11 or 11:30 on the morning of the
5 day of this accident was that the handles on the control
6 pedestal, which were shown to you yesterday and which are
7 depicted here in Defendant's Exhibit A in evidence -- I am
8 referring to these two handles; that they were very stiff and
9 difficult to operate and that he complained of this and that
10 as a result oil was put into the system in some manner by
11 someone from the ship's crew. Isn't it true, Mr. Ferenczy,
12 that air in the system would not make the handles more
13 difficult to operate, but would make them much easier to
14 operate; isn't that so?

15 MR. LORY: I object, your Honor. We are dealing
16 with semantics. We had something described to us through an
17 interpreter. Whether anything is lost in translation, I
18 don't know.

19 THE COURT: No, I will overrule the objection. You
20 may answer, sir.

21 A Air in the system would not make it more difficult
22 to move.

23 Q It would make it easier to operate, wouldn't it?

24 MR. LORY: Objection, your Honor. We are dealing
25 with operation and movement. There are two different

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rgrm 15

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Ferenczy-cross

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categories.

MR. KAIN: All right, I will rephrase the question.

Q If I remove all of the hydraulic fluid from that remote system, take all the oil out of it entirely, what is the effect on my ability to move this handle, the control handle?

A The effect might be more difficult because the sealing mechanism -- and on that system they would use "O" rings. The "O" rings have to be wetted with oil, you see, in order to get -- to reduce just the sliding friction, so if this were filled with air totally and it had a lack of oil bathing the "O" rings, the sealing rings, it could be more difficult to move.

Q Let's assume when the oil -- let's say it was a fraction line and the oil drained out and that would leave some residue on the rings, would it not?

A I would assume it would.

Q Would you assume that the handle would be easier to operate?

A It would be easier to operate.

Q If you lost half of the oil in that system, would the handle be easier to operate?

A Yes, it would.

Q So that one of the characteristics or one of the

1 rgrm 16

2 signs, if you will, indications of loss of oil in a system is
3 not stiffness or difficulty in moving a handle, is it?

4 A Generally, no.

5 Q Assuming this condition that you have depicted here,
6 this air bubble or this air pocket in this hydraulic system,
7 assuming such a condition, other than priming through or
8 putting more oil in the system, is there any way to correct
9 for this air pocket or this air bubble?

10 A When you say correct, do you imply --

11 Q To remedy the situation?

12 A Correcting the situation?

13 Q Yes.

14 A It would be to -- if this occurred at any
15 frequency, it indicates that you must replace the seals in
16 your equipment, but assuming your seals were functional, then
17 it would merely require a purge to remove the air.

18 Q Isn't it true, Mr. Ferenczy, that there is always
19 some loss of oil in a hydraulic system?

20 A Yes.

21 Q Let's take, for example you spoke yesterday, and I
22 think it is depicted on the drawing on the other side of that
23 board, about a balancing tank or a tank located some 40 feet
24 above the deck?

25 A Yes.

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Q If you know, is there any design in this system to take care of a loss of oil as it is pumped into -- I am now talking about the main system. Is there some loss through the pump as it is pumped and returned and pumped and returned?

A Yes, there is a minimal loss.

Q A minimal loss. Is there some feature in this system that is designed to take care of this minimal loss?

A In the main system, yes.

Q What is the feature?

A By establishing a head of oil, and that was the feature of having this reservoir of oil a height above the operating equipment.

Q Does that operate something like a gravity feed tank, in a sense?

A Yes, it would.

Q Its height above the deck --

A Yes.

Q -- serves to feed it automatically; is that correct?

A Yes.

Q Didn't you say yesterday that it would be most unusual, because of this feature, to have any loss of oil in this system or any air in the system? I am talking now about the main system as opposed to the working system.

A Yes. In the working system. Yes, I did.

1 rgrm 18

2 Q Let's go back to the remote system on this. This
3 diagram that you have before us, which is Exhibit 15,
4 Plaintiff's Exhibit 15 in evidence, if you completed that
5 diagram, shouldn't there be also a rack gear or whatever you
6 called it, that top ratchet-like; shouldn't there be one of
7 those with a handle at the bottom?

8 A Yes, there should be.

9 Q Could you put that into this diagram where it
10 should be?

11 A Yes, I could do that.

12 I am going to erase this.

13 Q What are you going to erase, sir?

14 A This (indicating).

15 Q I am sorry.

16 A In order not to complicate the drawing, because I
17 made that sketch of the directional valve I will not duplicate
18 it on the sketch.

19 Q I understand. Whatever is agreeable to you.

20 A So what you are going to have is this: On this
21 handle -- and this is the transmitting handle. You now have
22 the manual handle here, and it, too, is attached to a small
23 pinning gear. The difference -- the operation is quite like
24 this, but the difference being that there are two plungers.
25 So you have a situation like this with its chambers like this.

1 rgrm 19

2 Now, recall I mentioned the purposes of the pilot valve was
3 to direct the flow of oil to one side or the other in order
4 to get this valve, this handle, excuse me, to move in either
5 one or the other direction. We can assume that one is the
6 hoist and one is the lowering.

7 Q The same directions as shown on the other?

8 A You can assume that. The difference, now, is that
9 the oil supplied to this is operated -- it comes from a pump.
10 Let's say this is the -- we will call it the servopump. Now,
11 all the servo pump does is it brings oil to that valve. That
12 valve then directs that oil either to -- and I will just draw
13 the lines here. You will have operation, of course, on it,
14 so one oil line is going to come, hook into that, and, of
15 course, it will then branch around and hook into this,
16 because if we are going to get a movement and we were to fill
17 oil here, we would have to fill it here in order to get that
18 type of motion (indicating), and, of course, that type of
19 motion would tend to drive the handle in this direction. We
20 have another line coming down, feeding that, and then, too,
21 branching off -- coming down here and this little unlaut
22 indicates that it jumps over the other line.

23 So now depending upon what direction -- say if this
24 were to hoist and this was to lower, all this directional
25 valve must do is send the oil from the pump in this direction

1 rgrm 20

2 and it will move it this way to the lower. If we want to
3 raise, we then, of course -- this, then, the oil draining
4 from this side, of course, will go back to that directional
5 valve and find itself back in the suction line of the system.
6 So depending upon the movement, this line can be a feed and
7 -- or a supply line and this, of course, can be an existing
8 line, an exhaust line, a discharge line.

9 THE COURT: Mr. Kain, could you ascertain from the
10 witness whether that is in substitution of anything on the
11 drawing or whether it is in addition to something on the
12 drawing and how it ties in, because I think that is completely
13 unclear.

14 MR. KAIN: I was hoping to get into that, your Honor,
15 but I will ask him.

16 Q Mr. Ferenczy, does what you have drawn there
17 represent any change from what you have previously depicted, or
18 is it merely an addition of another feature?

19 A It is an addition to what I have already drawn.

20 THE COURT: I see.

21 Q Do engineers, Mr. Ferenczy, sometimes use the
22 expression "a slave system"?

23 A A slave system?

24 Q With respect to this type of equipment.

25 A I am not acquainted with the term "slave system".

1 rgrm 21

2 Q This lever that you have depicted at the bottom of
3 this drawing, that represents, does it not, sir, the control
4 lever on the cargo winch itself?

5 A That is correct.

6 Q And the upper lever that you have depicted repre-
7 sents the control lever on the remote system; is that correct,
8 the one you referred to yesterday as a transmitter; is that
9 correct?

10 A Yes.

11 Q The function of this transmitter is to permit one
12 man to operate both of these winches at one control station,
13 isn't that so, or one of the functions I should say?

14 A If these two transmitters are brought within reach.

15 Q Let me again refer you -- will you take the stand
16 again, sir.

17 May I again refer you to the photograph which is
18 Defendant's Exhibit A in evidence. I again refer you to the
19 two handles in the center of the photograph on top of the
20 pedestal.

21 A Yes.

22 Q Aren't those two handles the control handles for
23 this transmitting or remote system for both the port and the
24 starboard winches, both of those two cargo winches; is that
25 correct?

1 rgrm 22

Ferenczy-cross

2 A That is correct.

3 Q For this reason one man standing there may operate
4 both of these cargo winches even though they are at some
5 remote position from this control stand; is that not so?

6 A True.

7 Q Now, it would also be possible by utilizing another
8 man, to station a winchman at the control lever of each one
9 of these winches; is that not so?

10 A True.

11 A He could obtain the same motion on the winch by
12 moving the control lever at the winch; is that correct?

13 A True.

14 Q So in effect this transmitting system merely
15 transmits the motion, or the winch operator's designed speed,
16 what he intends to do with the winch, to the control lever on
17 his winch; is that so?

18 A It is so.

19 Q I believe you told us yesterday, and correct me
20 again if I am wrong, that if you had some air in this system
21 -- incidentally, assuming there is no fork or locking device
22 on these two control levers. Let's assume that the upper one
23 is the transmitting lever for the starboard winch and the
24 lower one is the actual lever on the starboard winch. With
25 this system, if I, for example, move the upper lever five

1 rgrm 23

Ferenczy-cross

2 degrees, the lower level will move five degrees, would it not,
3 in the same direction?

4 A Yes.

5 Q It transmits the motion exactly, does it not?

6 A It mimics it. Precisely.

7 Q Did you tell us yesterday that if you had some air
8 in the system, that perhaps when you moved this lever, say,
9 five degrees -- I am referring now to the transmitting lever
10 -- because of the air in the system that perhaps the lower
11 level might only move two degrees, or some lesser amount;
12 is that what you said yesterday?

13 A I did.

14 Q You were then referring to a lack of synchronization
15 between the transmitter handle or lever and the winch lever
16 or handle; is that so?

17 A That is so.

18 Q On this particular ship -- you have never been
19 aboard the Huguenot, have you, sir?

20 A I have not.

21 Q Will you assume with me that the winches would be
22 behind, that is forward of the man operating the controls
23 shown on that picture so that his back would be to these
24 winches.

25 A It could be.

1 rgrm 24

2 Q I said will you assume it.

3 A Yes, I will assume.

4 Q There would, of course, be no way that the man
5 operating these winch controls could see the lever on the
6 winch behind him; is that so? There is nothing on his
7 pedestal that would indicate to him what the winch control
8 was doing with reference to the control handle; is that so?

9 A No, there is not.

10 Q Let me give you the rest of the pedestal so you
11 will have both pictures in front of you. I am referring now
12 to Defendant's Exhibit B in evidence, both photographs. Is
13 there anything on that pedestal itself which would indicate
14 to the operator of the remote or the transmitting system the
15 movement of the control lever on the cargo winch itself?

16 A No.

17 Q There are no hoist positions indicated on this
18 transmitting system or lowering positions, are there?

19 A No.

20 Q Will you assume with me that the winch operator has
21 already testified in this case that there were no hoisting
22 or lowering positions, and that in operating this winch he
23 didn't look at his handles, he looked to see what his draft
24 was doing and he manipulated his handles in order to maintain
25 his draft on an even keel as he worked it across the deck.

1 rgrm 25

2 A Yes.

3 Q That would, would it not, be the normal way to
4 operate this winch?

5 A It would be.

6 Q Just like when you are driving the car, you don't
7 look down at your brake pedal, do you, to see how far in it
8 goes, you judge its effect.

9 A Correct.

10 Q Assuming this is so, what effect, if any, would
11 a small lack of synchronization have on the operation of the
12 winch?

13 A The effect would be to cause the operator to over-
14 act.

15 Q If you are assuming that he is not watching his
16 winch controls and he is moving these controls only with
17 reference to what the draft in front of his field of vision
18 is doing, why, in your opinion, would he be affected by what
19 the lever on the winch behind him was doing, the lack of
20 synchronization between that lever and the lever with which
21 he is actually working?

22 A Because in the normal operation of the two winches
23 you watch your load and your responses are directly related
24 to the movement of your load. That is why I said the air
25 would cause him to overact.

1 rgrm 26

2 Q Listen to me for a minute, Mr. Ferenczy. If his
3 winch transmission levers are affecting, as they would, what
4 his draft was doing, and if they are responsive to his wishes
5 in moving this cargo across, the fact that the lever on the
6 winch behind him is not in complete synchronization with the
7 lever on this control would be immaterial, would it not?

8 A Immaterial.

9 Q Assuming an air pocket in this type of a system.
10 I am referring now to the remote system. And assuming that
11 as a result of this air pocket this winch permitted the cargo
12 on it, on the cargo hook, to run away as described to you,
13 or move erratically as described to you yesterday by Mr. Lory.
14 Would this condition thereafter be constant assuming no
15 change and no repairs were made in this winch? In other
16 words, if the condition existed at the time to cause this
17 erratic motion, and assuming nothing was done with this winch,
18 would this condition continue to cause erratic motion?

19 A It would continue to cause erratic motion, but
20 perhaps not to the same magnitude.

21 Q For what reason would it not be to the same
22 magnitude?

23 A As I mentioned, because of vibrations -- under very
24 strange situations you can get these vibrations to be in
25 resonance, you see, and you will have an amplification of

1 rgrm 27

Ferenczy-cross

2 these vibrations under peculiar situations. Other situations
3 will cause the vibrations to attenuate, to diminish, you see,
4 so therefore it is very difficult to -- despite the fact
5 no change was made in the system, to be able to repeat a
6 process, you see.

7 Q Would there be any effect caused on this by the
8 weight of the cargo hook?

9 A No.

10 Q So the winch being erratic, if I understand you,
11 assuming it were erratic, it would be erratic whether you
12 had a light load or a heavy load; is that correct? I am
13 referring now to the condition you described of an air
14 pocket in the remote system.

15 A Generally.

16 Q I think you also mentioned yesterday in your
17 direct testimony -- you made mention of the fact that this
18 air in the remote system was -- did you say it was a growth
19 process?

20 A The admission of air into the mechanism usually is
21 a growth process. Should I qualify that now?

22 Q I don't want you to qualify it. I want you to tell
23 me if by that you mean it is a gradual process.

24 A Generally, yes.

25 Q If we were to take this remote system and assuming

1 rgrm 28

Ferenczy-cross

2 a load on the cargo hook, sever a portion of the system so
3 that the hydraulic fluid leaked out of this remote or
4 transmitting system, what would happen to the load on the
5 cargo hook? What would the winch do?

6 A Would you repeat that question? I missed you. I'm
7 sorry.

8 Q Will you assume with me a load on the cargo hook
9 for which this is the remote system.

10 A Yes.

11 Q If we were to sever this system so that the hydraulic
12 fluid -- I am referring now to the transmitting system --
13 drained from the system, what would the cargo winch do with
14 respect to the load on the cargo hook?

15 A It would stop.

16 Q Why would it stop?

17 A Because that pilot valve, as I indicated on my
18 sketch, if there is no oil no longer on the ends of that
19 pilot valve the springs will bring it immediately to its
20 center position, closing off any of the ports.

21 Q So these are spring loaded valves; is that correct?

22 A The pilot valve is a spring loaded valve.

23 Q How about the levers --

24 THE COURT: Mr. Kain, the polot valve, is the one
25 in the middle of the drawing; is that correct?

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2

THE WITNESS: That is correct.

3

MR. KAIN: The witness says so, your Honor.

4

Q Are the control levers spring loaded?

5

A No.

6

Q If I took my hand and moved this -- let's start

7

with the transmission system.

8

THE COURT: If I could stop you just a minute so

9

this point is clear.

10

Mr. Ferenczy, the pilot valve is the bar. Would

11

you put a marking there so that this testimony is fully

12

understood.

13

THE WITNESS: Yes, I will.

14

MR. LORY: Would your Honor want him also to

15

indicate something with respect to the springs?

16

THE COURT: Yes, I would like to have him put the

17

springs in.

18

MR. KAIN: Aren't there springs in the upper system,

19

too?

20

THE WITNESS: No.

21

THE COURT: What you had said, Mr. Ferenczy, was

22

that if the oil had completely drained out, those springs

23

would put the pilot valve in the middle and the winches would

24

stop turning in either direction because there is nothing

25

transmitted to the manual system; is that what you are saying?

THE WITNESS: Yes.

THE COURT: All right, go ahead, sir.

Q Will you tell me, Mr. Ferenczy, assuming I were operating the transmission system and I took this handle and I put it in a ten degree lowering position -- I am referring now to the upper handle on the transmission system. If at that point I let go of that handle, what would it do?

A It would stay there.

Q It would stay there?

A Yes.

Q It would not return to the middle position?

A No.

Q How about on the transmission system, if I took this winch control, that is the handle in the lower portion of that diagram, and I moved it the same ten degrees in the lowering position, and then I took my hand off it, would it stay there?

A It would tend to stay there, yes.

Q Assuming the air pocket that you have depicted in this upper portion of the diagram in the transmission system; assuming that such an air pocket existed and that a car being loaded aboard in the manner described to you yesterday by Mr. Lory was brought up on the Burton boom, started to Burton across with the winch operator slowly paying out on his Burton

1 rgrm 31

Ferenczy-cross

2 boom, that is, the boom out over the dock and slowly taking
3 in on his up and down boom, or the boom over the square of the
4 hatch; and assuming this erratic movement which you say in
5 your opinion was caused by an air pocket, if the winch
6 operator at that time were to immediately return that winch
7 control to neutral -- I am referring now to the neutral of
8 the Burton boom -- what would be the effect?

9 A If he were to immediately place that valve in the
10 neutral position, the tendency there would be for the pilot
11 valve to return to the neutral position.

12 Q Would it stop this erratic movement as described
13 to you?

14 A If it returned to the neutral position.

15 Q If it returned to the neutral position.

16 Now, assuming that this car were on a cargo hook
17 five or six feet above the ship's rail starting to Burton
18 across the deck and assuming this air in the system. I am
19 referring now to the system for the Burton. If that were put
20 to neutral you say it would stop it; is that right?

21 A Yes.

22 Q Suppose simultaneously the up and down winch control
23 was immediately put into full hoist, what would be the affect?

24 A The affect would be to bodily raise the load.

25 Q Assuming, for example, a large car weighing 4500,

1 rgrm 32

Ferenczy-cross

2 5000 pounds. If you put one of these cargo winches bearing
3 a portion of this load as it would be in a neutral or in a
4 Burton position as it started to come across the deck -- if
5 you put the up and down winch in full hoist, how fast would
6 that car move up in response to the full hoist? Approx-
7 mately.

8 A It is difficult for me to say that --

9 Q Isn't it true because of the rope speed it would be
10 pretty close up to the gin block before you could catch your
11 breath, up to the head of the boom?

12 A No, that is not so.

13 Q That's not so.

14 A That is not so.

15 Q Let me ask you to assume something further. Would
16 an air pocket or an air bubble in a transmitting system such
17 as you have depicted here and such as we had on the Huguenot
18 -- would such an air bubble have an affect on the ability of
19 the winch to hoist?

20 A On the ability of the winch to hoist?

21 Q Let's say on the speed, the hoisting speed of the
22 winch.

23 A The hoisting speed of the winch depends on the
24 capacity of oil that is fed to it, which depends upon the
25 main pump and motor.

1 rgrm 33

2 Q What I am trying to ascertain from you, if you can
3 tell me, in your opinion would a pocket of air, assuming one
4 in both transmitting systems, in the transmitting system for
5 the Burton winch, the starboard winch of this ship on the
6 forward end of this hatch and the transmitting system on the
7 up and down winch at the forward end of number 3 hatch;
8 assuming this pocket of air as you have depicted it there,
9 and assuming that as the car starts across with both of them
10 in a slow position, as he starts to Burton it across the
11 deck it reaches a point above the ship's rail; you say this
12 pocket of air would cause it to move down very rapidly; is
13 that correct?

14 MR. LORY: Your Honor, I object to the form of the
15 question.

16 THE COURT: You object to the form of the question?

17 MR. LORY: Yes. It is not facts in evidence, even
18 though it is on a hypothetical.

19 THE COURT: Let me have the question read back so
20 I have it firmly in mind and then you can restate your
21 objection.

22 (Question read.)

23 MR. LORY: If your Honor please, the car must first
24 reach a point above the ship's rail before it would start to
25 be Burtoned. That is my first objection. My second objection

1 rgrm 34

2 is it goes outside the scope of the direct examination
3 because the claim here is it goes from the Burton winch and
4 the Burton winch alone.

5 THE COURT: I do not know it to be so limited by
6 the proof that was given. It is just something happened and
7 we are trying to find out what happened.

8 MR. KAIN: That is correct. There is no testimony
9 by anybody that there was air in either system.

10 THE COURT: I will allow the question.

11 MR. LORY: If your Honor please, the other part of
12 the objection is that Burtoning would not start until the
13 load had reached a point that it was so many feet above the
14 ship's rail. The question is not stated in that particular
15 fashion. We have the Burtoning and then we have it being
16 raised.

17 THE COURT: If you are talking about words of art,
18 I think the witness understands that this load was above the
19 rail and moving across and it is at that point that --

20 MR. KAIN: Approximately five to six feet above the
21 ship's rail, Mr. Ferenczy, where it started to be Burtoned
22 across the deck.

23 THE COURT: I will overrule the objection, sir.
24 Go ahead.

25 Do you want the question read back to you again?

1 rgrm 35

2 THE WITNESS: No, it is not necessary.

3 Q Would you like this question read back to you?

4 A No, I would not.

5 Q All right, will you assume this and will you assume
6 the erratic movement as described to you by Mr. Lory yesterday,
7 this swooping down. Would you tell me in your opinion --

8 A I can't go along with your assumption on the fact
9 that you said the handles were in the slow position. There
10 is no slow position on these handles. I think what you are
11 inferring is that the windlass drums are rotating at a slow
12 speed.

13 Q As long as we are getting into words of art, Mr.
14 Ferenczy, the windlass is not a cargo winch, is it?

15 A Winch.

16 Q Will you assume with me, then, that the winch
17 operator here has testified that he raised this cargo on the
18 Burton boom alone --

19 A Yes.

20 Q -- until it was a distance of approximately five to
21 six feet -- that is the bottom of the car above the starboard
22 rail of the ship; that he then started to Burton it across
23 the deck very slowly. It is true he made no reference to
24 positions, but very slowly.

25 A True.

1 rgrm 36

2 Q By slacking slowly on his Burton control and taking
3 in slowly on his up and down control, intending to move it
4 horizontally across the deck --

5 A Yes.

6 Q -- that at a point above the ship's rail, while his
7 control levers were in this position, the erratic movement
8 described to you yesterday by Mr. Lory took place --

9 A Yes.

10 Q It suddenly swooped down with no change of his
11 control levers.

12 A True.

13 Q Will you assume further that the winch operator
14 testified that when it started to swoop down he immediately
15 put his Burton control lever in neutral and he put his up and
16 down control lever in full hoist, but that this had no affect
17 on this car, it continued to fall through this arc until it
18 was brought up by the up and down cargo fall and that the up
19 and down cargo fall did not take in this wire fast enough to
20 permit him to check this swooping and erratic motion of this
21 automobile. I ask you if you can tell me, sir, in your
22 opinion, could the actions described by the winch operator
23 result from air bubbles or air pockets in the transmitting
24 systems for these winches?

25 A Yes, it could.

1 rgrm 37

Ferenczy-cross

2 Q Is it your opinion that the air pocket or air bubble
3 would prevent, for example, the Burton winch from stopping
4 when it was put into the neutral position?

5 A Yes, it could.

6 Q And is it your opinion that a similar air bubble
7 could prevent the up and down winch from taking in when it was
8 placed in the full hoist position?

9 A In this instance it could, but I don't believe that
10 that is what occurred at this point.

11 Q I am asking you, is it your opinion that this
12 erratic movement was caused by an air bubble in each instance.

13 A It could be caused by an air bubble.

14 Q Now, will you assume with me that after this erratic
15 motion by this car in falling through this arc, that there
16 came a time when this car was suspended over the square of
17 the hatch directly under the head of the up and down boom and
18 that thereafter, with no repairs or nothing being done to
19 this winch, that the car was thereafter removed from the
20 hatch, taken over and placed back on the dock without incident
21 and without any difficulty. In your opinion, would the same
22 condition that you say permitted this erratic movement in
23 attempting to bring the car aboard have had any affect in
24 taking the car off the ship and putting it back on the dock,
25 assuming nothing was done with the winches? In other words,

1 rgrm 38

Ferenczy-cross

2 nothing was done to the winch, would the winch operate in
3 the same erratic fashion?

4 A It doesn't necessarily have to operate in the same
5 erratic fashion. As I mentioned with the amplifying or
6 attenuating of these vibrations that can reduce the frictional
7 aspects within your system.

8 Q Can you tell me in your opinion what feature of
9 this transmittal system in effect permitted this winch, or
10 would permit this winch to repair itself so that the car
11 could be put out on the dock without incident?

12 MR. LORY: Objection, if your Honor please. The
13 witness has not testified that it repaired itself. He merely
14 testified that the reaction need not be the same.

15 THE COURT: I will sustain the objection only to
16 the form of the question.

17 Q All right, will you tell me in your opinion why
18 the action need not be the same.

19 A I don't quite know just where to begin. Are we
20 now going to -- do you want me to qualify any of these things?

21 Q No, I just want you to tell me --

22 THE COURT: Mr. Ferenczy, the question to you, sir,
23 is, can you tell us why the operation would work properly
24 removing the car where it had the swopping when the car was
25 brought in. Mr. Kain, is that a fair paraphrase of your

1 rgrm 39

2 question?

3 MR. KAIN: Yes, sir.

4 A Yes.

5 Q That is precisely my question. Why didn't you have
6 the same reaction from the winch controls in removing it back
7 that you had when you brought it in?

8 A You wouldn't have to have the same reaction because
9 you are having a reverse process. In racking your load from
10 over the hatch to over the dock where they eventually
11 deposited the car, you now are requiring the Burtoning winch
12 to hoist rather than to lower, you see.

13 Q No, just a minute. Let's go back over this again.
14 We have assumed that this car has come down in a swooping
15 motion and has eventually come to rest over this hatch square,
16 since it came down in its swooping motion it is now directly
17 over the square hanging directly under the head of this up
18 and down boom.

19 A That is correct.

20 Q Now, in order to Burton it across over the rail, is
21 it not so that you have to take it up on this boom, your up
22 and down boom; you have to lift it to get it to the height
23 to go over the rail, don't you?

24 A Well, you didn't mention that fact in your state-
25 ment. You said it was hanging over the hatch.

1 rgrm 40

2 Q I ask you to assume, Mr. Ferenczy, that it came
3 down in a swooping arc as described to you by Mr. Lory
4 yesterday.

5 A Yes.

6 Q So assuming that it is eventually after this
7 accident over the square of this hatch at a lower height than
8 it was when it was brought over before --

9 A Yes.

10 Q In order to raise it you would have to take in on
11 your up and down boom --

12 A That is correct.

13 Q And you would --

14 A You would have to lift first on your up and down.

15 Q You might do this in a combination lift on both
16 of them, but there would come a time when these runner angles
17 necessitated your slacking on this one, isn't that so?

18 A That is so.

19 Q But when you got over the pier here, in order to
20 put this car down you would have to go through the very same
21 motion that you were doing; you would have to slack on your
22 Burton just like you had to slack to permit it to be Burtoned
23 across; isn't that true?

24 A Yes.

25 Q My question is, if you can tell me, why in your

1 rgrm 41

Ferenczy-cross

2 opinion would not the same erratic movement result when you
3 slackened -- assuming it was caused by this air which you say
4 you believe was entrapped in the Burton winch transmitting
5 system, in your opinion, why wouldn't it work the same when
6 you slackened the Burton boom with a car on it on this
7 occasion?

8 A Because when you had this air, which is an express-
9 ible substance, and it is expressed, it is unpredictable in
10 its behavior because of its expansive qualities. This is why
11 it is a very treacherous situation to have.

12 Q Mr. Ferenczy, this transmitter system, this doesn't
13 operate the cargo winch at all; it has nothing to do with the
14 cargo winch at all, does it?

15 A Except that it signals the cargo winch to hoist or
16 to lower.

17 Q It moves the lever, and as you just told us, the
18 same in phase, doesn't it?

19 A Correct.

20 Q If it is out of phase when this car swooped down,
21 how does it get back in phase when the car is lowered to the
22 pier?

23 A It doesn't have to get back in phase because in
24 phase implies, as you have stated, that if the transmitting
25 lever is moved five degrees, the manual lever, too, will move

1 rgrm 42

2 five degrees.

3 Q That is if it is in absolute synchronization; is
4 that right?

5 A We now have a situation where you have to move the
6 transmitting lever say ten degrees to get a response of five
7 degrees on your manual lever, which will lower your load.

8 Q In your opinion, does the moving of that transmitter
9 lever an extra five degrees in order to get five degrees of
10 lowering or hoisting on the winch, does that in your opinion
11 have any significance with respect to cause this winch to
12 create this erratic movement you were talking about?

13 A Yes, it does.

14 Q Why?

15 A Because if this system is in absolute synchronism,
16 or solidly filled with oil, it means that once you move the
17 transmitting lever -- say your five degrees, you build up
18 a pressure to move your manual lever that five degrees.
19 When these two motions are identified, the pressure zeroes
20 out. If you have air in that system -- and now you must move
21 the transmitting lever ten degrees to get a corresponding
22 movement of five degrees on your manual lever, the manual
23 lever in moving five degrees does not restore the liquid,
24 the pressure in the liquid or the substance to zero pressure.
25 You still have this pressure within your compressed air, and

1 rgrm 43

2 here is the treachery of it all. At any time, you see, for
3 any reason if the resisting force of those rams at one time
4 lessens slightly less than the pressure contained in that air
5 that can expand, you will have this erratic motion. We do
6 not know when it will occur.

7 Q And this is true, in your opinion, I gather, even
8 though the winch operator himself cannot see whether there is
9 synchronization on the winch that he is working with and
10 even though he is not looking at his handle, but watching his
11 draft, so he doesn't know whether he is putting it 5 or 10
12 or 15 or 20 degrees to move his draft, isn't that so?

13 A That is so.

14 Q Will you assume with me that after this car was
15 placed on the pier that the car was taken off -- and the car
16 handling gear was taken off this cargo hook and that a pallet
17 or basket was put back on and that this -- using the same
18 winches with no changes in them, this pallet or basket was
19 brought aboard, Burtoned across the deck, put in the ship
20 and thereafter the decedent in this case was placed on this
21 pallet or basket, brought up, taken across -- Burtoned across
22 the deck again and put back on the dock. Would you expect,
23 based on your experience, that you would have the same type
24 of erratic motion resulting from what you say was an air
25 pocket or an air bubble?

1 rgrm 44

2 A I would expect it to happen. I could not predict
3 it to happen.

4 Q Will you assume with me that the winch operator has
5 testified here that at approximately 11 or 11:30 a.m. he had
6 trouble with the winch controls for these winches because of
7 only one thing, that they operated very stiffly and that he
8 asked, or he complained of this condition and that thereafter
9 somebody from the ship applied oil, or put oil into this
10 control pedestal and moved these handles back and forth, and
11 that thereafter until the time of this accident at approxi-
12 mately 7:15, 7:20 p.m. he experienced no difficulty with
13 these winches, and that he was able to suddenly -- I am sorry,
14 that he was able before this accident to bring two or three
15 cars on board with no difficulty. Based on your prior
16 testimony that this was a gradual process, would you expect
17 that this air bubble to which you referred or this air pocket
18 had in this instance occurred simultaneously or instantane-
19 ously, rather?

20 A I don't know -- simultaneously means --

21 Q I'm sorry, instantaneously is the word I should
22 have used.

23 A Instantaneously means without a lapse of time. It
24 could not occur without a lapse of time. The difficulty in
25 manipulating his handles indicates to me that there was a

2 problem of seals, and if he had a problem of seals, and
3 perhaps when he added oil -- the testimony does not say that
4 he added oil from a lubricating point or that he had added oil
5 to rid the system of air.

6 Q Will you assume with me, Mr. Ferenczy, that the
7 testimony doesn't say whether he added oil from a lubricating
8 gun or whether he added it from some other type of equipment,
9 just that there was oil added.

10 A That there was oil added. I would assume that, yes.

11 Q Would you expect that an experienced winch operator
12 who had been operating winches of this type for a matter of
13 five to seven years would notice an air pocket, if one
14 existed, or an air bubble if one existed in his transmitting
15 system in this type of a winch?

16 A I think he would.

17 Q If I understand your testimony correctly, you would
18 not expect, based on your experience, that this type of a
19 condition could occur instantaneously, but that it would be
20 a gradual building up process.

21 A Generally it would be.

22 Q You also told me, did you not, that the same
23 erratic movement as described to you by Mr. Lory could be
24 produced by the winch operator if he were careless in operating
25 his winch controls, did you not?

1 rgrm 46

2 A We can extend the word "careless" to include this.

3 Q Well, improperly handle the winch controls.

4 A If they were improperly handled, yes.

5 Q The winch controls improperly handled could produce
6 the same type of erratic swooping motion; is that correct?

7 A It could.

8 MR. KAIN: I have nothing further.

9 THE COURT: Why don't we take our recess now.

10 (Recess)

11 THE COURT: Mr. Cohen.

12 CROSS EXAMINATION

13 BY MR. COHEN:

14 Q Mr. Ferenczy, can you tell us when you were first
15 brought into this case?

16 A Do you want the specific date?

17 Q If you have it, yes.

18 A I was called the Thursday prior to the week the
19 case began.

20 Q I'm sorry, you were called Thursday --

21 A The Thursday prior to the week the case began.

22 Q Does that mean two weeks ago today?

23 A Yes, it would be two weeks ago today.

24 Q That was the first time you new anything at all
25 about this case; is that correct?

1 rgrm 47

2 A Yes.

3 Q Who called you at that time?

4 A Mr. Lory.

5 Q Did you meet with Mr. Lory?

6 A I contacted Mr. Lory sometime during the day and
7 I then met him that evening, Thursday evening.

8 Q When you met with Mr. Lory that evening, was anyone
9 else with him?

10 A No.

11 Q Did you thereafter have other meetings with Mr.
12 Lory?

13 A Yes. I saw Mr. Lory Monday morning.

14 Q This Monday morning?

15 A No. The Monday morning following that Thursday,
16 past the weekend, and he had asked me to look at some plans
17 and that he needed them Monday morning.

18 Q I didn't want to know about the conversation that
19 took place. My question was, did you thereafter, after
20 meeting with Mr. Lory two week ago in the evening, did you
21 meet with him again and your answer is the following Monday
22 morning; is that correct?

23 A Yes.

24 Q Who was with you on that meeting on Monday morning?

25 A There was someone. I don't know who it was, but

1 rgrm 48

2 there was someone in the office and he left and then I spoke
3 with Mr. Lory.

4 Q Did you thereafter have any further meetings with
5 Mr. Lory?

6 A Yes. I met Mr. Lory on Tuesday, and I believe that
7 was the first day the actual court case began.

8 Q Was anybody present with you at that meeting?

9 A Yes. The members -- the family of the deceased.

10 Q Anybody else?

11 A No, I don't recall anyone else.

12 Q Did you have subsequent meetings thereafter with
13 Mr. Lory?

14 A Just in coming down here.

15 Q At your meetings with Mr. Lory before this case
16 began, did he make you aware of or familiar with the deposi-
17 tion testimony given by Mr. Pitt?

18 A Yes. He gave me --

19 Q If you could answer my questions yes or no we can
20 move along a lot quicker.

21 A I'm sorry.

22 Q So that two days ago when you sat at the counsel
23 table while Mr. Lory read that testimony of Mr. Pitt, that
24 was not the first time you heard it, was it?

25 A Well, I had read it.

1 rgrm 49

2 Q If I used the wrong word I will change it. That
3 was not the first time you knew of what Mr. Pitt had said,
4 was it?

5 A No.

6 Q You had known earlier?

7 A Yes.

8 Q I believe you said to Mr. Kain that you had some
9 experience while working at Bethlehem Steel in testing
10 electric winches; is that correct?

11 A Yes, I did.

12 Q When was the last time that you personally ever
13 operated a hydraulic winch?

14 A Perhaps in 1959 or 1960.

15 Q Under what circumstances?

16 A I was first assistant engineer on Grace Line Ships.

17 Q They had hydraulic winches?

18 A Yes. We had hydraulic topping winches.

19 Q When was the last time you ever operated a hydraulic
20 cargo winch?

21 A In the shipyard.

22 Q I asked you when, sir. If you could stay with my
23 question.

24 A I am trying to think. In 1955.

25 Q Under what circumstances did you operate a hydraulic

1 rgrm 50

2 winch in 1955?

3 A As a trial engineer.

4 Q I'm sorry, sir?

5 A Trials. Conducting the vehicle through its trials.

6 Q Who were you working for at that time?

7 A Bethlehem Steel.

8 Q So you tested at that time not only electric winches
9 but also occasionally hydraulic winches; is that correct?

10 A Yes.

11 Q Do I understand correctly, then, that since 1955
12 you have never operated a hydraulic cargo winch?

13 A That is correct.

14 Q And you were never aboard the Huguenot; is that
15 correct?

16 A True.

17 Q And you never had any occasion to examine or check
18 or inspect the hydraulic winches aboard the Huguenot; is that
19 correct?

20 A True.

21 Q You have no personal knowledge of your own about
22 the vibrations that you say may exist in the operation of
23 these hydraulic winches on the Huguenot, do you?

24 A Specifically aboard the Huguenot, no.

25 Q Do you know, sir, whether or not in these hydraulic

1 rgrm 51

2 winches on the Huguenot there were any dampening devices that
3 were built in to offset any possible vibrations?

4 A I do not know.

5 Q You do not know?

6 A No.

7 Q Did you check the plans or specifications to see if
8 they indicate the presence of such dampening effects before
9 you gave your testimony today about vibrations?

10 A I looked through the plans, yes.

11 Q Did you find in the plans any indication of any
12 dampening systems?

13 A No, I did not.

14 Q And you looked through them carefully, did you?

15 A Yes, I did.

16 Q You have been testifying theoretically, if I may use
17 the term; is that correct?

18 A Yes.

19 Q You have been asked to testify on the basis of a
20 number of things that you were asked to assume the truth of;
21 is that right?

22 A Yes.

23 Q One of the things you were asked to assume the truth
24 of is that as this automobile was raised to a height above
25 the ship's rail of about five or six feet, you were asked to

1 rgrm 52

Ferenczy-cross

2 assume that it then took an erratic downward swinging motion
3 across the ship and struck Mr. Iannuzzi; that is one of the
4 things you were asked to assume; is that right?

5 A Not that it struck Mr. Iannuzzi, but I was asked to
6 assume that it swang on its arc.

7 Q Well, did Mr. Lory, in the course of his confer-
8 ences with you, explain to you what the plaintiff -- what he
9 claims here occurred?

10 MR. LORY: I am going to object to that, your Honor.

11 THE COURT: No, I will allow it.

12 Q Do you understand my question?

13 A No, I do not.

14 Q If at any time you don't understand my questions,
15 and I can understand how that can happen, but if that should
16 occur at any time, please tell me and I will try to make it
17 clear.

18 A All right.

19 Q In the course of your discussions with Mr. Lory
20 before coming to court to testify, did not Mr. Lory acquaint
21 you with the fact that he was contending in this case that
22 this car, as it reached a height of about six feet above the
23 rail, suddenly took an erratic downward swinging motion
24 across the ship and struck Mr. Iannuzzi and knocked him into
25 the hatch below?

1 rgrm 53

Ferenczy-cross

2 A Yes.

3 Q So you knew that was the claim being made; is that
4 right?

5 A Yes, I did.

6 Q One of the things you were asked to assume is that
7 such a situation did, in fact, exist; is that correct?

8 A Yes.

9 Q Whether it did in fact exist or not you don't know,
10 do you?

11 A No, I do not.

12 Q If such a situation did exist, namely, such an
13 erratic swinging motion of the draft, the cause of it could be
14 found either in the manner in which the winch was operated
15 or in the winch itself; is that correct?

16 A Yes.

17 Q There could be no other possible explanation if
18 such a situation did in fact exist; is that right?

19 A Yes.

20 Q So that when Mr. Lory said to you, "Assume that
21 such a situation existed, and then further assume that the
22 winch operator was competent and was operating the winch
23 properly," he only left you with one alternative; isn't that
24 correct?

25 MR. LORY: I will object to that, your Honor.

1 A No, he didn't leave me with one alternative.

2 THE COURT: I will allow it.

3 A (Continuing) He asked me if there could be a
4 situation within the system that would allow for this erratic
5 motion, assuming the skill of the operator was not in question.
6

7 Q In other words, if we assume that this incident
8 did occur in that fashion, if we assume that the operator
9 handled his machine properly, then Mr. Lory asked you, do
10 you have an explanation for how this could have happened; is
11 that right?

12 A In essence, yes.

13 Q Since we have ruled out any incompetency of the
14 operator by the only assumption left -- the only alternative
15 that would be left necessarily would be a defect in the winch;
16 is that correct?

17 MR. LORY: I object to that question.

18 THE COURT: I will sustain an objection to the
19 question in that form.

20 Q If I understand you, sir, this hydraulic fluid that
21 is used in those winches is used because it is non-compres-
22 sible; correct?

23 A True.

24 Q That means that although it is a liquid, it has
25 some of the characteristics of a solid; is that right?

1 rgrm 55

2 A True.

3 Q Therefore when -- what do you call this rectangular
4 object up there? I forget the name you gave that.

5 A A ram or a plunger.

6 Q When that ram is moved to any extent in this
7 direction, for example --

8 A Yes.

9 Q It would push the hydraulic fluid and an equal space
10 throughout the entire system, if the system has its full
11 integrity; is that correct?

12 A True.

13 Q Now, if I understand you correctly, if the system
14 no longer possesses its full integrity because there is an
15 air pocket in it, that air pocket will function as a cushion,
16 so to speak, or a sponge?

17 A To a degree.

18 Q In other words, at this point here where the air
19 pocket begins, the amount of movement will be absorbed to
20 some extent by the air pocket so that the fluid on the other
21 side of the air pocket will not move to corresponding
22 space as the fluid in the beginning of the air pocket?

23 A True.

24 Q Right?

25 A Yes. True.

1 rgrm 56

2 Q And because of that effect the winch, if it has air
3 in the system, you said you would describe it as sluggish in
4 operation; is that right? Wasn't that the term you used
5 yesterday?

6 A I don't recall that term.

7 Q Well, what you said today with Mr. Kain is that if
8 there is air in that system and the winch operator would push
9 his handle forward five degrees, the end result would only
10 be a two degree forward motion, or something less than five
11 degrees on the actual winch drum itself; is that right?

12 A It could be.

13 Q When the handle is in the vertical position, the
14 winch is stopped; is that correct?

15 A True.

16 Q I'm sorry, sir.

17 A I said true. Excuse me.

18 Q The further forward that the handle gets pushed,
19 the further away from the vertical the greater is the rotating
20 speed of the actual winch drum; is that right?

21 A Correct.

22 Q Similarly, if it is pulled back in the opposite
23 direction, the greater degree from the vertical the handle
24 is moved the greater is the rotating speed of the winch drum
25 in either direction?

1 rgrm 57

2 A Yes.

3 Q Now, a winch operator who has been handling those
4 winches for a period of time becomes accustomed to seeing
5 that -- and to knowing that as he moves his hands with the
6 lever in them a certain number of degrees he expects to see a
7 certain type of reaction in the draft, does he not?

8 A He does.

9 Q As you explained it to us, if there is air in the
10 system, the reaction of the draft will not be what the winch
11 operator would expect; is that correct?

12 A It could be.

13 Q It would be less because of the cushioning effect
14 of the air; is that right?

15 A Initially it will be less.

16 Q What we are dealing with is initially, all right?

17 A Yes.

18 Q So that if a winch operator is slackening off a
19 Burton winch that has air in it, the initial effect would be
20 that the winch drum would not slacken off as fast as he would
21 normally expect it to; is that right?

22 A Yes.

23 Q And if the winch drum doesn't rotate or slack off
24 as fast as he would normally expect it to, the draft is not
25 going to move as fast as he would expect it to; is that right?

1 rgrm 58

2 A True.

3 Q Now, the testimony in this case, sir, is that as
4 Mr. Coppola -- by the way, did you ever meet Mr. Coppola?

5 A No, I did not.

6 Q The testimony in this case, sir, by Mr. Coppola,
7 who was operating the winch, is that as he started to slack
8 off the Burton winch, after having raised the draft to a
9 point about six feet off the rail -- let me withdraw that and
10 preface it this way.

11 Mr. Coppola testified that he had raised the draft,
12 consisting of an automobile, up from the dock to a point about
13 five or six feet over the ship's rail; all right?

14 A Yes.

15 Q What he proposed to do at that time was to bring
16 it athwart ship so as to get it over the square of the hatch
17 in order to lower it into the square of the hatch; okay?

18 A Yes.

19 Q In order to bring it across the ship from its
20 point approximately six feet over the rail he started to slack
21 off slowly on the Burton while taking in with the up and down;
22 okay?

23 A Yes.

24 Q Is that the proper procedure for a winch operator
25 to do if he wanted to accomplish what Mr. Coppola wanted to

1
2 accomplish?

3 A Yes, it is.

4 Q Now, Mr. Coppola testified that as he slacked off
5 with the Burton at that point, the Burton suddenly ran away;
6 all right?

7 A Yes.

8 Q And seeing it run away he did two things, he
9 immediately pulled the handle back to the vertical position
10 and he put the up and down in full hoist; all right?

11 A True.

12 Q Now, the situation that Mr. Coppola has described
13 of the winch -- the Burton winch running away immediately
14 upon his starting to slacken it off is completely at odds
15 with the characteristic of what a Burton winch would do if
16 it had an air pocket in it as you have described, isn't
17 that true?

18 MR. LORY: Objection, your Honor.

19 A No.

20 THE COURT: No, I will allow it.

21 Q Let's go back, then, so we understand each other.

22 I thought I had understood you to say that with air
23 in its system, when you start to slacken off on a Burton
24 winch you would have a cushioning effect so it would not move
25 as fast as you might otherwise anticipate; isn't that what

1 rgrm 60

2 you said before?

3 A I said yes to the question.

4 Q Thank you.

5 Now, Mr. Coppola testified not that that it didn't
6 move as fast as he would anticipate, Mr. Coppola testified
7 that as he started to slacken off it moved much faster than
8 he would anticipate and it ran away from him. Now, wouldn't
9 you agree that there is a basic difference between what Mr.
10 Coppola said happened and what you tell us theoretically
11 would happen if there was air in the system?

12 A The way the questions are posed, yes.

13 Q Thank you. Do you have any objection with the way
14 the questions are posed?

15 A In this instance they seem to be misleading.

16 Q I see. Let me ask you this, where you present when
17 Mr. Coppola testified?

18 A No, I was not.

19 Q Then on what basis do you say that I am misleading
20 you, sir?

21 MR. LORY: Let me object, your Honor. Aren't we
22 getting argumentative?

23 THE COURT: No. This is cross examination. I will
24 allow it.

25 Q My question, sir, is if you were not present when

1 rgrm 61

Ferenczy-cross

2 Mr. Coppola testified, on what basis do you say my question
3 misleads you?

4 A The question misleads me because you indicate that
5 as soon as that lever was moved a slight amount, the winch
6 started to rotate.

7 Q Did Mr. Coppola tell you any differently?

8 MR. LORY: Objection. He has already said he didn't
9 speak to Mr. Coppola.

10 THE COURT: Mr. Cohen, go at it another way. I see
11 what you are saying. All right. No, I will allow the
12 question. Go ahead.

13 Q Did Mr. Coppola tell you anything to the contrary?

14 A I never met the man.

15 Q Then why do you say that I am misleading you?

16 A Because the natural reaction -- as someone indicated,
17 if you apply a brake to an automobile and it doesn't stop
18 the car as you expect it to stop, you automatically,
19 unconsciously apply a little more pressure and this is what
20 happened, I believe, in the case of Mr. Coppola.

21 Q This is your psychoanalysis of what Mr. Coppola
22 must have done; is that right?

23 MR. LORY: Objection, your Honor.

24 A I am not a psychoanalyst.

25 Q I know that.

1 rgrm 62

2 THE COURT: I will allow the question in substance.

3 Mr. Cohen, put it again.

4 MR. COHEN: All right.

5 Q Let me ask you, isn't what you are really saying
6 that there is a basic inconsistency between your theory and what
7 Mr. Coppola has testified, at least as I have given you his
8 testimony?

9 A No.

10 Q If Mr. Coppola testified that as he started to
11 slack off the Burton instead of getting a sluggish response
12 he got a runaway Burton, isn't that inconsistent with what
13 you tell us would happen if there is air in the system?

14 A On the surface it appears as an inconsistency,
15 but when looking at it in detail it is not.

16 Q If Mr. Coppola would tell us that immediately upon
17 getting this runaway response from the Burton winch he
18 brought that handle back into the vertical position to stop
19 it --

20 A Yes.

21 Q That is also inconsistent with your theory; isn't
22 it?

23 A No, it is not inconsistent with my theory.

24 Q I believe you said to Mr. Kain that if the handle
25 was brought back into the vertical position, even with air in

1 rgrm 63

Ferenczy-cross

2 the system the winch would stop; isn't that right?

3 A I most certainly did. If the pilot valve is
4 restored to the central position.

5 Q By the way, when Mr. Lory before you came to court
6 let you read the deposition of Mr. Pitt, did he also let you
7 read the depositions of other people who after this incident
8 checked and inspected these winches?

9 MR. LORY: Objection, your Honor. At this particular
10 point I will move for a mistrial. This is totally uncalled
11 for. There is nothing in the record to indicate anything
12 on that basis.

13 THE COURT: I will deny your motion for a mistrial.
14 The question calls only for a yes or no answer.

15 MR. COHEN: That is all it does call for.

16 THE WITNESS: Would you restate that question.

17 MR. COHEN: May we have the reporter read it back,
18 please, your Honor.

19 THE COURT: Yes.

20 (Question read.)

21 A I did not read any other deposition.

22 MR. LORY: If your Honor please, I will renew my
23 objection. There is no indication and there is nothing in
24 this case to indicate that other people had made any inspec-
25 tions. This suggests something that I think is wholly and

grossly prejudicial.

THE COURT: Your objection is noted.

Q Mr. Ferenczy, I want you to further assume that Mr. Coppola also testified that when he brought the Burton lever back into the vertical or stopped position he also thrust the up and down lever into the full hoist position. All right?

A Yes.

Q That should normally have the effect, should it not, of causing any slack to be taken up by the up and down; is that right?

A If we regard a time element it is correct.

Q And the end result in that situation of having the Burton lever in the up or stopped position and the up and down lever in the full hoist position, the end result should be that the draft is carried across the ship, but at an angle that would take it higher and higher; is that right?

A No.

Q No?

A No, this is not right because -- can you give me some indication as to the time it had taken for that load to drop and you are now telling me that a man's reflexes would be faster than the time it took for that load to drop to make these changes in the lever system, for this associated system reactions to get this winch to prevent that load from

1 rgrm 65

Ferenczy-cross

2 falling? That load fell, I feel, before Mr. Coppola or anyone
3 else could have had the celerity of his reflexes to affect a
4 change in the levers.

5 Q Well, then, you wouldn't assume what Mr. Coppola
6 testified to?

7 MR. LORY: Objection, your Honor.

8 THE COURT: No, I will allow that.

9 Q Are you unwilling to assume because you believe
10 it is incredible what Mr. Coppola testified to?

11 A Not at all incredible. I am merely saying that
12 there was not a sufficient interval of time for his response
13 to be shown in the action of the winches.

14 Q I see. How long a period of time elapsed?

15 A When this load dropped?

16 Q Yes, sir.

17 MR. LORY: Objection, your Honor.

18 THE COURT: If he knows or if he was advised of
19 that or took that into consideration.

20 MR. COHEN: No, I will put it this way.

21 Q Mr. Ferenczy, you are saying there wasn't a
22 sufficient amount of time to permit this activity on the part
23 of Mr. Coppola; is that right?

24 A Yes.

25 Q Now, I am asking you in view of that answer how much

1 rgrm 66

2 time do you say elapsed.

3 A A minute fraction of a second.

4 Q Until what happened? What do you say happened
5 with this draft?

6 A What occurred.

7 Q What occurred?

8 MR. LORY: Objection, your Honor.

9 THE COURT: No, I will allow this. This is cross
10 examination.

11 Q In other words, where did the draft end up?
12 Describe the full path of the draft.

13 A The draft ended swinging on the up and down whip,
14 swinging on its radius, and it came to rest directly under-
15 neath the top of the boom.

16 Q Then if it came to rest after swinging under the up
17 and down, I assume that at some point in its path, it had
18 gone beyond the head of the up and down boom over toward the
19 coaming on the offshore side; is that correct?

20 MR. LORY: Again an objection, your Honor.

21 A It is within the realm of possibility.

22 MR. LORY: This witness was not there and it is not
23 in the record.

24 A It is within the realm of possibility. I don't
25 know.

1 rgrm 67

2 MR. LORY: Your Honor, I must protest. Mr. Cohen
3 is asking this witness to speculate as to facts not in
4 evidence. He is not presenting proper hypothetical questions.

5 THE COURT: This witness has himself speculated as
6 to facts not in evidence about this man subconsciously
7 pushing the lever farther than he testified he pushed it.

8 MR. LORY: If your Honor please, you have here
9 winches which operate with a single motion of the control.
10 It is not like other winches that have been described here
11 which have points.

12 THE COURT: Mr. Lory, I do not think the colloquy
13 gets us anywhere. I will permit an exploration into the
14 basis of the man's opinion and this is cross examination.
15 Go ahead, sir.

16 Q You are saying that if this draft followed that
17 erratic movement that you have been asked to assume without
18 your personally knowing, that it occurred so quickly that
19 neither Mr. Coppola nor any other winchman would have been
20 able to bring the Burton handle back into the up and down
21 position and to thrust the up and down lever into the full
22 hoist position; is that correct?

23 A Yes, depending on how rapidly the Burton winch
24 unreels.

25 Q So that if I understand you correctly, Mr. Ferenczy,

1 rgrm 68

Ferenczy-cross

2 that would mean that somewhere over the inshore rail that
3 draft would start to swing down and across the ship, and my
4 question to you is, what would stop it?

5 A Would you restate that again?

6 Q Yes.. As that draft swung from a point above the
7 ship's rail, it swung in a path downward and across the ship,
8 what would stop it? How far would it swing?

9 A Depending upon how slack your Burton whip was.

10 Q Mr. Coppola said that the Burton ran out. Now,
11 how far would it swing before it would stop?

12 MR. LORY: If your Honor please, Mr. Coppola said
13 that he also stopped the draft over the square of the hatch.
14 I think this witness is entitled to know this.

15 Q As you visualize this, what would stop the swing
16 of that draft and where would it stop?

17 A What would stop the swing?

18 Q Yes.

19 A As the draft started to ascend on the arc.

20 Q Ascend?

21 A Ascend.

22 Q Before it ascends it reaches its low point; is that
23 right?

24 A That's right.

25 Q Then it starts to go up higher on the other extreme;

1 rgrm 69

2 is that correct?

3 A Yes.

4 Q How far would it extend in its ascension?

5 A When it is ascending, the energy it builds up would
6 be equal to its momentum and then it would stop and start
7 a descent.

8 Q It would be sort of like a pendulum; is that right?

9 A That's correct.

10 Q So that if it started in its descent over the ship's
11 rail on this side, it would pretty much end its ascent some-
12 where over the ship's rail on the other side; is that
13 correct?

14 MR. LORY: Objection, your Honor.

15 A No, not at all.

16 THE COURT: Well, he answered.

17 Q How far would it get?

18 THE COURT: Wait a minute. I think Mr. Lory's
19 objection there is well taken, to the extent that you are now
20 discussing the absence of any restraining influence of any
21 other lines. We did have testimony here as I recall it that
22 it had a pendulum-like effect, but I do not recall the extent
23 of the pendulum-like effect.

24 MR. COHEN: You see, my problem is that the witness
25 would not accept that testimony from Mr. Coppola.

1 rgrm 70

Ferenczy-cross

2 Q Mr. Ferenczy, you heard Mr. Lory make an objection
3 a moment ago based on the grounds that Mr. Coppola testified
4 that he was able to stop this draft while it was over the
5 square of the hatch. Did you hear Mr. Lory say that?

6 A I did indeed.

7 Q Now that you heard Mr. Lory say it, will you please
8 accept it as the testimony that Mr. Coppola gave that he was
9 able to stop that draft while it was over the square of the
10 hatch, all right?

11 A I never questioned it.

12 Q Good.

13 Now, how did he stop it?

14 A By manipulating his control levers on the trans-
15 mitter.

16 Q Which control lever?

17 A The Burton, to stop the swing.

18 Q That is the one that you say was not functioning
19 properly because it had air in it; correct?

20 A That's correct.

21 Q You had testified yesterday that the winch operator
22 is the brains of the equipment. That was your terminology,
23 I believe.

24 A I believe it was.

25 Q That does not mean that he has got to be an

1 rgrm 71

Ferenczy-cross

2 intellectual, does he? That wasn't the sense in which you
3 referred to him?

4 A Not at all.

5 Q You meant he was the one who initially generates
6 the impulses to be generated to the system; is that right?

7 A True.

8 Q The system should follow the impulses he transmits
9 to it; is that correct?

10 A It should.

11 Q In order to keep a draft that you want to bring
12 across a ship on an even keel, it is necessary, is it not,
13 to coordinate the movements of your up and down winch with
14 the Burton winch so that what you are slacking off with the
15 Burton winch you are picking up with the up and down?

16 A True.

17 Q And if you should slack off on the Burton faster
18 than you are picking up on the up and down, the draft will
19 have a tendency to go down?

20 A True.

21 Q Conversely, if you should slack off on the Burton
22 and pick up at a faster rate on the up and down, the draft
23 will have a tendency to go up?

24 A True.

25 Q The system that you have drawn on the board is a

1 closed system, is that so?

2 A Yes.

3 Q So that if there is an air pocket in the system it
4 remains in the system unless it is bled off in some way as
5 you have indicated could be done?

6 A True.

7 Q The effect of the air that is in the system will
8 always make itself felt in that system if there is air there,
9 will it not?

10 A If there is air there.

11 Q I want you to further assume as a fact that Mr.
12 Coppola testified that when he brought the Burton lever back
13 into the vertical or stopped position and he thrust the up
14 and down lever into the full hoist, that the up and down
15 winch did not pick up. Now, do you have an explanation for
16 the up and down winch not picking up at that time?

17 MR. LORY: Objection, your Honor. That is not the
18 testimony of Mr. Coppola.

19 MR. COHEN: I believe it was, your Honor.

20 THE COURT: Let's see. My memory of it was he said
21 the up and down did not do it. That is what I have written
22 in my notes.

23 MR. LORY: His testimony was it did not pick up
24 fast enough; it did not take up the slack quickly enough.
25

2 MR. COHEN: That is not so. He said it did not
3 pick up as your Honor has it.

4 THE COURT: In any event, the jury's recollection
5 of that testimony will govern. If there is any question
6 about it in your deliberations, you may have it read to you.

7 Q In other words, Mr. Ferenczy, what I am trying to
8 establish is, as we have already discussed, that you have to
9 pick up with the up and down as much as you are slacking off
10 with the Burton to keep this on an even keel going across
11 the ship; right?

12 A True.

13 Q If the Burton should start to slack off faster,
14 you can nonetheless keep it on an even keel by picking up
15 faster with the up and down?

16 A Within limits.

17 Q Yes. So long as they are in synchronization with
18 each other, is that right?

19 A Yes.

20 Q If Mr. Coppola testified that he put the up and
21 down into full hoist and it did not do it, it did not pick up,
22 do you have an explanation for why the up and down failed to
23 function at that point in time?

24 MR. LORY: Objection. There is nothing in the
25 record to indicate that the up and down failed to function.

1 MR. COHEN: If your Honor please, this was Mr.
2
3 Coppola's testimony.

4 THE COURT: This was his testimony.

5 MR. LORY: I mean, it didn't do it, your Honor, and
6 yet we end up with his further testimony that he managed to
7 stop the draft over the square of the hatch, it did not do it
8 momentarily. I mean, this is what I understood his testimony
9 was.

10 MR. COHEN: He stopped the draft, as Mr. Ferenczy
11 said, by putting it --

12 MR. LORY: I also remind your Honor that Mr. Coppola
13 is in the employ of Mr. Cohen's client.

14 MR. COHEN: That isn't true for a long time.

15 May we have the statement that Mr. Coppola is in
16 the employ of my client stricken. That has not been so for
17 several years.

18 THE COURT: Yes. Disregard the comments of counsel.
19 They are not in evidence.

20 A May I have the question reread?

21 Q I wish we would. I have forgotten it, too.

22 (Question read.)

23 MR. LORY: I renew my objection, your Honor.

24 THE COURT: It is noted. You may answer that.

25 A I do have an explanation.

Q Please let us have it.

A The winch is capable of picking up a five-ton load. Now, before it can pick up the five-ton load, as I explained to you there is an element of time to allow the resistance of this load to build up to a point so that the selector valves can come into play to allow the oil and its associated pressure to act on the three chambers giving it maximum hoist. Maximum hoist -- and I wish I had my paper and then I could read what it is. My yellow paper I believe has that and it will save me time looking for that. Could you hand me the yellow sheet, sir.

Q Do you want some yellow paper to write on?

A No. I just had put down some things here.

Yes, on page 18 it says that, "The winch is capable of a five-ton lift." It doesn't take too much imagination to realize that when that load was swinging on its arc when Mr. Coppola attempted to lift the load that it was descending. Therefore, its effective weight was much greater than its actual weight, you see.

Q What was its actual weight, sir?

A I don't know.

Q If you don't know its actual weight, can you tell us what its effective weight was?

A I can give it to you as an expression. Its

1 effective weight is its actual weight plus its mass
2 multiplied by its velocity squared. That would be its
3 effective weight.
4

5 Q How much would that be for an automobile?

6 A Which could have well exceeded the five-ton weight.

7 Q How much would that be for a heavy automobile,
8 approximately?

9 MR. LORY: If your Honor please, the witness has no
10 way of having an initial way upon which to base anything
11 further.

12 THE COURT: I will allow the question.

13 A I would rather not hazard a guess at this moment,
14 sir, because --

15 Q I don't want you to guess, but could you tell us
16 approximately within a couple of hundred pounds what you
17 estimate the effective weight of that automobile? It was
18 described to us as a heavy automobile, or a large automobile.
19 Can you tell us within a couple of hundred pounds approxi-
20 mately what you considered the effective weight of that would
21 have been?

22 MR. LORY: If your Honor please, I renew the
23 objection. We have to have a weight to start with.

24 THE COURT: I seem to have the memory that the
25 purposes of direct testimony -- the witness had given an

1 estimate of what he understood the car to weigh being in the
2 vicinity of two tons. Did you use that expression?
3

4 MR. LORY: No, Mr. Kain suggested that to him, if
5 your Honor please.

6 THE COURT: Well, was it adopted by you, Mr.
7 Ferenczy?

8 THE WITNESS: He said make it an assumption the car
9 weighs two tons.

10 Q Would it offend your understanding of what large
11 cars weigh to assume that it weighs two tons?

12 A No, it would not offend me.

13 Q Can you tell us approximately what the effective
14 weight of such a car would be as you visualize it?

15 A It could easily exceed 1000.

16 Q It could easily exceed what, sir?

17 A 1000 pounds.

18 THE COURT: More in its descent.

19 Q So that might be about three tons. These are five-
20 ton wiches, you said?

21 A Yes.

22 Q They could accommodate 10,000 pounds?

23 A On a vertical hoist. You see, you have to bring in
24 a vector component here. The hoist -- when he attempted to
25 lift this load, the hoist was not directly under his boom tip.

1 that when Mr. Coppola, who had had the up and down winch lever
2 in a hoisting position, put it into full hoist it didn't work?

3 MR. LORY: Objection, again. That is not the
4 testimony in the record.

5 THE COURT: Can you use the testimony as best you
6 can recall it?

7 MR. COHEN: I'm sorry, your Honor?

8 THE COURT: I think Mr. Lory is questioning the use
9 of the word "work". It was either that it didn't do it or
10 it didn't quite do it.

11 MR. COHEN: He said it didn't do anything.

12 THE COURT: It didn't do it or it didn't quite do
13 it was what he said.

14 Q In other words, as I understand it, Mr. Coppola
15 was trying to use the up and down to pick up faster because
16 of the accelerated speed at which he said the Burton was
17 slackening off, and that would be a proper reaction in a
18 situation like that, wouldn't it?

19 A It would.

20 Q But when he says he put the up and down into full
21 hoist, in order to get it to accelerate faster to compensate
22 for the additional acceleration of the Burton slacking, running
23 out, he said the up and down didn't do it.

24 Now, can you explain to us why it was that at that
25

1 juncture in time, if you know, the up and down didn't do it?

2 A It didn't do it in the specified time that the load
3 took to descend because we know the winch was operable later
4 on.
5

6 Q Which winch was operable later on?

7 A Both winches.

8 Q What significance is the fact that both winches
9 were operable later on?

10 A The significance is that you must consider this
11 whole situation, this whole problem within specified time
12 zones and you are not doing this, or Mr. Coppola in his
13 testimony did not mention this. He said the winch didn't do
14 it. It didn't raise the load in that specified time.

15 Q It didn't take it up; it didn't take up the slack?

16 A It didn't take up the slack within that very small
17 increment of time.

18 Q That is what Mr. Coppola said, right?

19 A No. Mr. Coppola didn't say that. I am saying that.

20 Q Those levers that the winch operator uses to activate
21 the winch, they are subject to the elements, are they not?

22 A They are.

23 Q They may rust or corrode?

24 A If not maintained.

25 Q If they get stiff in their motion, might that be due

1 rgrm 81

2 to corrosion or rusting or something of that sort?

3 A It could be due to the salt environment.

4 Q If you were an officer on a ship and received a
5 complaint that the lever was stiff, hard to move, would you
6 go to check the joint in which the lever is attached to the
7 system to see if there is any salt or corrosion or rust?

8 A I think I would.

9 Q And you would correct a stiffness in the lever by
10 lubricating that area, would you not?

11 A If lubrication was necessary, yes.

12 Q Or if there was any foreign matter there you would
13 clear away the foreign matter.

14 A Yes.

15 Q If you were going to lubricate a winch lever because
16 it is stiff, could you show us on either of these photo-
17 graphs, sir, Exhibits A or B, just whereabouts it would be
18 that you would apply the lubrication?

19 A Generally there is a very small bearing exteriorwise.
20 I think that might have a possibility of hanging up. So I
21 would lubricate that. I would also make sure that the seals
22 were properly -- not only properly lubricated, but that they
23 were in good repair.

24 MR. COHEN: May we have the marking pencil, please.

25 Do you have it, Mr. Kain?

1 'rgrm 82

Ferenczy-cross

2 Q These small bearings that you would look at, they
3 are on the outside of this system, are they not?

4 A I would think they are.

5 Q Could you draw an arrow -- it is on this photograph,
6 is it not, Exhibit A, that you would expect to find them?

7 A It would generally be in this area here (indicating).

8 Q Could you just draw an arrow there.

9 A Well, something like that.

10 Q Could you make it a little darker, please.

11 A And you might have --

12 Q Could you make that first arrow darker.

13 A It would be generally in that area there.

14 Q That is on the outside of the housing where the
15 lever is attached to the housing itself; is that right?

16 A Yes. It could occur there.

17 Q That is where you would expect to lubricate, if you
18 are lubricating for a stiff lever?

19 A Not only there.

20 Q Well, tell us where else.

21 A As I said, the internals of this within the casing,
22 I would then look to see if I had any type of undue drag on
23 your little plungers with respect to moving the lever.

24 Q Would that require taking apart this casing?

25 A It might and it might not. It might be --

1 rgrm 83

2 Q If you were going to look inside the casing,
3 wouldn't you have to take it apart, or is there some way you
4 could get in without taking it apart?

5 A No. I could tell by my operational procedure prior
6 just how often this problem occurred, how often I had to
7 add oil. This is the only indication as to wear and tear.

8 Q I am not sure if I fully understand you. If there
9 is a complaint that a lever is stiff in motion, I believe you
10 said that would normally call for some lubrication to be
11 applied in the area where you have drawn this area on --

12 A I said it could be involved there.

13 Q Yes. That is where you would lubricate?

14 A You could lubricate at that point.

15 Q All right.

16 A I am specifically making that remark, but what I
17 am saying to really understand where your problem is you have
18 to consider the history of the unit to see just how often you
19 have to lubricate or to add oil; how often the purging is
20 necessary.

21 Q I see.

22 A This is going to indicate the general quality of
23 wear on your system.

24 Q I would like you to assume that in the two days that
25 these winches were being worked before this accident occurred

1 rgrm 84

Ferenczy-cross

2 there was a complaint by the winch operator, Mr. Coppola, only
3 one time, and that was between 11 and 11:30 in the morning of
4 November 24; that he was experiencing some stiffness with one
5 of the handles of the winch; all right?

6 A Yes.

7 Q And that aside from that complaint he had no
8 trouble with these winches at all in those two days; all
9 right?

10 A Yes.

11 Q Now, upon receiving such a complaint, where, if
12 anyplace, would lubrication be applied?

13 A The complaint is a strange one to me.

14 Q It is?

15 A It is.

16 Q In what sense is it strange to you?

17 A Because the winches were in operation. They were
18 in operation the day before and I can hardly see in the course
19 of this layover period of one night, or a matter of hours how
20 any serious corrosion problem could develop that would render
21 this handle difficult to move. In my mind's eye I cannot
22 qualify that.

23 Q In your mind's eye you cannot?

24 A Qualify it.

25 Q You find it hard to accept?

1 rgrm 85

2 A I find it hard to find reasons for it. I am not
3 denying it, certainly.

4 Q All right.

5 An air pocket in the system itself would have no
6 affects upon any stiffness in the lever, would it?

7 A Hardly.

8 Q As a matter of fact, I think you said to Mr. Kain
9 that if there is air in there it makes the lever easier to
10 work.

11 A It could very well.

12 Q So these two things ~~are~~ unrelated; is that correct?

13 A They seem to be.

14 Q When you say they seem to be unrelated, you are
15 testifying on the basis of your knowledge of this kind of
16 winch and hydraulics and engineering and mechanics, aren't
17 you?

18 A Yes.

19 MR. COHEN: May I just show the jury where this
20 witness placed the arrow on Exhibit A, your Honor?

21 THE COURT: All right, sure.

22 (Exhibit shown to jury.)

23 Q On this same Exhibit A, just to the left of where
24 your arrow is, there are three little things sticking up from
25 the top of the winch and they all have red circles on them.

1 rgrm 86

Ferenczy-cross

2 Do you see those --

3 A Yes, I do.

4 Q -- crayon circles.

5 What are those three little things?

6 A I do not know.

7 Q What do you mean you do not know? You don't know
8 what they stand for?

9 MR. LORY: Objection, your Honor.

10 MR. COHEN: I'm sorry, I didn't mean it that way.

11 Q You say you do not know. Do you mean that these
12 three things that are circled in red are devices that you have
13 no understanding of?

14 A I cannot identify them by those three protrubera-
15 tions.

16 Q You don't know what their function is?

17 A Tell me what they are and I will tell you their
18 function.

19 THE COURT: No, the question, sir, is, do you know
20 what they are.

21 THE WITNESS: I can't identify them from the
22 photograph, no.

23 Q By the way, on this photograph, Exhibit B -- that
24 shows the bottom part of this whole winch apparatus, do you
25 notice a couple of pedals there?

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A Yes, I do.

Q Do you know what they are?

A Yes, I do.

Q Could you tell us, please?

A They are the brake pedals.

Q What do they do?

Q They mechanically stop the winch from turning.

They are hydraulically connected to brake bands on the winch drum

Q There are two separate winches, the port and starboard --

A Yes.

Q And there are two separate pedals. Is it one pedal for each of the winches?

A Yes.

Q Would it be the pedal on the port side that would be the brake for the port side winch and the pedal on the starboard side that would be the pedal for the starboard side winch?

A Yes, I would assume so.

Q Does that braking system operate hydraulically also?

A Yes, it does.

Q Does that operate independently of the transmission system?

1 rgrm 88
2 A The transmission system -- the remote control system?

3 Q Yes.

4 A Yes, it does.

5 Q So that any air in the remote control system which
6 might slow down or make that system sluggish would not have
7 any affect on the braking system that is operated by these
8 pedals, would it?

9 A No.

10 THE COURT: Mr. Cohen, would you be much longer,
11 or should we recess for lunch?

12 MR. COHEN: I don't think I will be much longer,
13 but I think Mr. Lory will have some questions.

14 MR. LORY: I will not have many.

15 MR. COHEN: Then I may just have one question.

16 THE COURT: Fine.

17 MR. KAIN: If your Honor please, I expect to have
18 a few questions. Not many, but a few.

19 THE COURT: Then we will recess for lunch, ladies
20 and gentlemen, until 10 minutes after 2.

21 (Luncheon recess.)
22
23
24
25

AFTERNOON SESSION

2:15 P.M.

(In open court; jury present.)

EDWARD FERENCZY, resumed.

MR. COHEN: I have no further questions of Mr. Ferenczy, your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. LORY:

Mr. Ferenczy, so the record is clear, this remote system that you have drawn for us with the transmitter lever at the top, the top portion of Plaintiff's Exhibit 15, the pilot valve beneath with the phase adjustment section inbetween. Now, on the hoist side you have one segment and on the lower side you have another segment. Those segments are completely separated, are they not?

A The left segment is separated from the right segment. In the remote control system in the lower drawing where it shows the manual handle, they are not completely separated.

Q What I have reference to is the left side of the brand and the left side of the pilot valve with the connections inbetween --

A That is one segment and that segment is completely

1 rgrm 90

2 separated from a similar segment on the right side; is that
3 correct?

4 A Yes, it is.

5 Q The only connection between those two would be the
6 phase adjustment control?

7 A That is so.

8 Q When operating a hydraulic winch, is the manipula-
9 tion of the control handle one continuous motion until you
10 receive some reaction at the end of the cargo fall?

11 MR. COHAN: I am going to object. It is going to
12 depend on the individual operator and the circumstances.

13 THE COURT: Yes. I will sustain the objection on
14 the grounds of form.

15 Q I believe you told Mr. Kain, Mr. Ferenczy, that in
16 the operation of hydraulic winches the operator will view
17 the draft or the cargo --

18 A Yes.

19 Q -- and manipulate his handles until sometime as he
20 gets some reaction; is that true?

21 A Yes.

22 Q Now, yesterday when you were describing to us the
23 remote system and the affect of air in that system, was it
24 your intention to tell us what would develop within that
25 system as the hand progressively traveled in one direction in?

1 rgrm 91

Ferenczy-redirect

2 MR. COHEN: I object to what his intention was.

3 MR. KAIN: I join in that objection.

4 THE COURT: Yes, I sustain the objection.

5 Q Would you agree, Mr. Ferenczy, that in operating a
6 hydraulic winch system such as we have here, that the intention
7 of using the remote system is to get a similar motion on the
8 main system with respect to the control?

9 A Yes.

10 Q And the distances that the control lever on the
11 remote system is moved would be determined by the reaction
12 of the draft?

13 A Yes.

14 Q Mr. Ferenczy, when I first called you into this
15 action, were you informed that we had --

16 MR. COHEN: Objection to what he was informed.

17 THE COURT: Objection sustained.

18 Q When I first called you into this action, Mr.
19 Ferenczy, did I tell you anything --

20 MR. COHEN: Objection to what he told him.

21 THE COURT: Well, there were certain questions on
22 cross examination as to the nature of the problem that was put
23 to this witness by Mr. Lory.

24 MR. COHEN: That is not about what he was about to
25 ask.

1 THE COURT: Then that is another matter. I thought
2 he was getting into that.

3 MR. LORY: While he is still here, I would like this
4 supplemental pretrial memorandum marked, please.

5 (Plaintiff's Exhibit 16 marked for
6 identification.)

7 MR. LORY: So the record will show, this is
8 plaintiff's supplemental pretrial memorandum, and if your
9 Honor please I should like to read from this.

10 THE COURT: On what basis?

11 MR. COHEN: I never heard of this, he reads from
12 his own supplemental pretrial order.

13 MR. LORY: If your Honor please, there has been a
14 suggestion --

15 THE COURT: Let's come to the side bar for this.

16 (At the side bar.)

17 THE COURT: Yes, go ahead.

18 MR. LORY: If your Honor please, there has been a
19 suggestion made before the jury that Mr. Ferenczy was called
20 in out of the blue just weeks ago. We did have another expert.
21 We filed a paper with the Court, this particular memorandum,
22 indicating why this particular expert was not called. We
23 also told Mr. Ferenczy the fact that we did have another
24 expert and what the circumstances were that prompted his
25

1 rgrm 93

Ferenczy-redirect

2 being called. I think this jury is entitled to know this
3 based upon the cross examination put to this witness by Mr.
4 Cohen. Whether this is done directly by the Court --

5 THE COURT: All I think Mr. Cohen did was to
6 establish the time of his first meeting with you. I do not
7 think anything was gone into as the fact that he was
8 replacing somebody or anything else.

9 MR. COHEN: The fact that he never saw this ship or
10 never boarded it, I think that was relevant.

11 THE COURT: I think when he first saw it and what
12 was said to him --

13 MR. LORY: He also suggested that Mr. Ferenczy
14 adopted any theory put to him.

15 THE COURT: But this does not affect that issue at
16 all.

17 MR. KAIN: That has no bearing, I submit, your Honor,
18 on the witness.

19 THE COURT: No. I will sustain the objection.

20 (In open court.)

21 MR. LORY: I have no further questions.

22 THE COURT: If I may ask a question, if you
23 gentlemen do not mind, and, Mr. Kain, if that model can be so
24 rigged that the hook of the lift is over the rail of the vessel.
25 Perhaps Mr. Molanphy can so turn it.

1 MR. KAIN: Do you wish to rerig the cargo hook?

2
3 THE COURT: No, just take the Burton down a little
4 and also the up and down. Now the Burton down a little bit
5 so it is over the rail of the vessel. Just a little bit
6 more. It would be a little higher now. It would be just as
7 though -- the draft, as I recall, was coming across -- yes,
8 along in there. Thank you very much.

9 BY THE COURT:

10 Q Mr. Ferenczy, as I understand it -- and I am now
11 discussing with you only theory not having to do with what
12 happened here -- but only theory as to which you have given
13 testimony. Assuming there was an air lock in that remote
14 control -- that air bubble in that remote system as you have
15 described there and the handle is put in the neutral position,
16 the pilot valve will immediately return to the middle
17 position, will it not?

18 A Yes, it would.

19 Q Now, if it returns to the middle position, the
20 thing you described as pilot valve there, that immediately
21 stops the winch itself through its operation on the manual
22 control; does it not?

23 A Yes.

24 Q Regardless, therefore, of whenever the witness here
25 put the Burton handle in the neutral position, I gather that

1 rgrm 95

Ferenczy-

2 at such time as he did all signals to the manual system would
3 be neutral and the manual system would stop?

4 A Correct.

5 Q Now, and I direct your attention now to the model
6 which is one of our exhibits on this trial, the Burton boom
7 is the one that is out of the dock. Am I correct that if at
8 the time Mr. Coppola put the Burton handle into the neutral
9 position, the cables were as you now see them, isn't it
10 necessarily so that the only place that that draft could have
11 gone is up on the arc of the radius of the fall from the
12 Burton boom, because the Burton winch had been automatically
13 put in the stopped position?

14 A If the Burton boom had been put in the automatic
15 stop position, that would be.

16 Q That is my question to you.

17 A Yes. But if there is air in this system there is
18 going to be a time lag before you get the response, you see,
19 down here from his transmitting lever.

20 Q If you put the handle in the neutral position,
21 isn't there more pressure on the left side pushing that
22 pilot valve back because that left side is nothing but oil
23 and the right side has air?

24 A Well, see, again, for the sake --

25 Q We are making assumptions. I will withdraw my

1 question.

2 A If what you say were true, if that were correct.

3 Q Thank you very much.

4 Are there any questions prompted by my questions?

5 MR. KAIN: I have some that may be related to it,
6 your Honor, but I had them before your question.

7 THE COURT: Go ahead.

8 RE CROSS EXAMINATION

9 BY MR. KAIN.

10 Q Mr. Ferenczy, isn't it true that with respect to
11 this cargo winch we are discussing, that is the cargo winches
12 at the forward end of No. 3 hatch of the Huguenot, there is
13 no free spooling device on those winches, is there, sir?

14 A No, there is not.

15 Q Will you answer the question.

16 A No, there is not.

17 Q That means that in using these winches you have
18 nothing like you might have on a fishing reel where if you
19 take the drag off the weight will run it down rapidly?

20 A True.

21 Q With these winches the wire has to, in effect, be
22 driven on to the drum and driven off the drum; is that
23 correct?

24 A That is correct.

1 Q Isn't it also true, Mr. Ferenczy, that if -- and I
2 am talking now about the remote system -- if the control lever
3 say is put at a five degree hoist -- I'm sorry, lowering,
4 five degrees. Let's assume that he is operating it slowly,
5 and if because of an air bubble the lower level there as shown
6 in that diagram which controls the winch, which is what
7 actually controls the wire, the cargo winch itself; if
8 because of an air bubble that only comes over say two degrees
9 as you described for Mr. Cohen, or two and a half degrees,
10 if this transmitter handle is never changed, it is impossible
11 for this winch handle to ever go any further than the
12 transmitter handle. It may eventually correct itself because
13 of this air bubble, but it won't go past what is shown on the
14 transmitter, will it?

15 A No. That is an incorrect statement.

16 Q That is an incorrect statement?

17 A Yes, sir, it is. It is incorrect for this reason,
18 that we do know from Newton's law that a body at rest tends
19 to remain at rest and a body in motion tends to remain in
20 motion, so, therefore, if that handle were moved say the
21 five degrees and it only resulted in building up enough force
22 to move that pilot valve the two degrees, because of the
23 expansive qualities in that air you are still getting a force,
24 but a lesser force. This lesser force may be quite sufficient
25

1 to keep this body in motion and, therefore, it could very
2 well exceed --
3

4 Q And make it go faster?

5 A Yes, it could.

6 Q How much faster could it go? Is there any way you
7 could estimate it?

8 A How much further? I can't determine this with so
9 many unknowns.

10 Q Now may I ask you something else, sir. Assuming a
11 draft being lowered on this Burton fall with this Burton
12 winch. If you opened that winch to its full power -- and you
13 have already agreed with me it has to be driven.

14 A Yes, I did.

15 Q The maximum speed that you could lower that draft,
16 driving it at full power, because it doesn't fall free, you
17 agreed with me, would be, I think, 110 meters per minute;
18 is that correct? Would you look at page 18.

19 A Yes, I would -- I will, excuse me.

20 That is correct, 110 meters per minute.

21 Q That comes out, does it not, to about six feet per
22 second?

23 A Does it come out to six feet per second? I don't
24 know.

25 Q Is that what your mathematics reveal? Could you

1 rgrm 99

Ferenczy-recross

2 compute that quickly and tell me if that is about what it
3 comes to per second?

4 A Yes, I will. About that. Just about that.

5 Q Now, if we assume that this is the Burton boom and
6 that this is the Burton cargo fall, do you agree with me that
7 the maximum speed with which any object secured to the
8 bottom of this would be 110 feet -- I'm sorry, would be six
9 feet per second?

10 A Yes.

11 Q Now, the maximum speed you can drive this up is not
12 the same, is it?

13 A No, it is not.

14 Q Because of the construction of the winch?

15 A Yes.

16 Q So assuming all things being equal, you can lower
17 a load faster than you could bring it up --

18 A Yes.

19 Q That is because it only has to in lowering through
20 one of those or phases that you talked about?

21 A Yes.

22 Q So assume a cargo of this size, approximately two
23 tons, the maximum you could raise with your up and down boom
24 would be 55 meters per minute, wouldn't it?

25 A If the car weighs two tons it might be the 55, or

1 it probably would be the 2.5, because at that angle -- as I
2 mentioned, the effective weight is greater. You see, if that
3 car, say it weighs -- we did say something like two tons.
4 That doesn't mean that the load on each windlass is one ton.
5 You see, because we have to go into a calculation here that
6 in order to lift something at an angle it takes a greater force
7 than the weight of the object.
8

9 Q Would it be accurate to say that assuming you were
10 lowering full speed with your Burton and raising full speed
11 with your up and down, that roughly the ratio would be two to
12 one; it would go down about twice as fast as it came up?

13 A Yes, I would say roughly that would be correct.

14 Q So that would mean, on the figures we have been
15 using, assuming Mr. Coppola had this up and down winch at full
16 speed in a hoist position, that the maximum rate that this
17 weight could fall would be three feet per second; is that
18 about right?

19 A Okay. I don't know if it is quite right, but it
20 seems reasonable.

21 Q There is only one other thing I would like to clear
22 up with you. You were talking this morning about effective
23 weights. In this position is the weight of an object falling
24 -- say if this object were falling, is the weight on this
25 line greater when it is falling at an angle like this, at

1 rgrm 101

2 least where the cable is at an angle, or is it greater when
3 it is directly under the head of the boom falling; which is
4 the greater weight -- effective weight, if you will?

5 A Falling vertically.

6 Q Falling vertically directly under the head of the
7 boom or falling as we have the Burton?

8 A If it were falling directly, it would be the most.

9 Q It would be a greater weight, more effective?

10 A Yes.

11 Q Thank you.

12 MR. COHEN: No questions.

13 THE COURT: Mr. Lory?

14 MR. LORY: No questions.

15 THE COURT: Thank you, sir, you are excused.

16 (Witness excused.)

17 MR. LORY: If your Honor please, I have a report
18 from the New York Shipping Association with respect to the
19 hours worked by Mr. Iannuzzi during the years of 1967 and
20 1968, plus --

21 THE COURT: Has there been consultation about this
22 exhibit?

23 MR. KAIN: I have agreed with Mr. Lory that insofar
24 as the hours and other material there, I conceded those are
25 authentic insofar as the records. Now, part of it -- the

1 rgrm 107

2 MR. KAIN: Yes. If your Honor please, at this time
3 the defendant moves to dismiss the negligence count of the
4 complaint on the grounds that there has been no proof of notice
5 to this defendant of any defective condition or of any
6 situation for this accident and I submit to your Honor that
7 in the absence of proof of notice, either actual or construc-
8 tive, the plaintiff has failed to make out and sustained his
9 burden of proof, I should say, with respect to his
10 negligence count.

11 The defendant also moves to dismiss the complaint on
12 the unseaworthiness count on the basis that the only
13 competent evidence in this case as to the causal question
14 between the operation of the winch and this accident is the
15 testimony of Mr. Ferenczy that the erratic motion described
16 could result from the improper operation of the controls by
17 the winch operator. I submit to your Honor that there is no
18 testimony, no competent testimony in this case that there was
19 any defective or unseaworthy condition in this winch. The
20 assumption of air in the remote system is just that,
21 an assumption by Mr. Ferenczy, with no basis of proof, and
22 indeed the testimony is that following this accident, without
23 any repairs or any changes of any kind whatsoever in these
24 winches, the car was returned to the dock; the cargo hook was
25 rerigged; the basket or pallet was brought back on board and

1 rgrm 108

2 that subsequently using the same cargo winches Mr. Iannuzzi
3 was returned to the pier and subsequently removed to the
4 hospital. On this basis I submit to your Honor that there is
5 no competent proof in this case of any defect in these cargo
6 winches.

7 MR. COHEN: May I, if your Honor please, join in
8 both branches of Mr. Kain's motion, and may I just be heard
9 for a moment in short argument in support of it, to this
10 effect, sir --

11 THE COURT: Surely.

12 MR. COHEN: It seems to me if I understood what has
13 been transpiring in this courtroom that Mr. Lory's claim is that
14 the vehicle was unseaworthy because the transmitting part,
15 or the remote part of the Burton winch system had an air
16 pocket in it and that that condition in this hydraulic system
17 rendered the vehicle unseaworthy.

18 Now, if your Honor please, Mr. Lory's own expert,
19 Mr. Ferenczy, has testified that the presence of such an air
20 pocket in that system would have the effect of making the
21 system sluggish; in other words, it would retard the motion.
22 The testimony from the fact witnesses, your Honor, is that
23 the motion of the winch was not retarded, but was accelerated,
24 the very converse of the situation that would exist if Mr.
25 Ferenczy's premise were to be accepted.

1 rgrm 110
2 Accordingly, if your Honor please, even if there
3 were air in that system, that could not have been the compe-
4 tent producing causes of this occurrence. As Mr. Ferenczy
5 himself said, you could have air there and sometimes it would
6 be operative and sometimes it wouldn't be operative, it is
7 unpredictable. That is the plaintiff's proof when he rests
8 his case. He rests it on that basis. Accordingly, there is
9 no competent proof of any causal relationship whatever between
10 the kind of defect that he claims rendered this ship unsea-
11 worthy and the happening of this accident. Indeed, it would
12 seem to me from what I have heard, if I understood it, that
13 this could be a -- it would have to have been completely
14 unrelated because what the people who were present testified
15 to was a situation that would be the very opposite of what
16 Mr. Ferenczy would expect if this air problem were operative.

17 THE COURT: Mr. Lory, do you want to be heard on
18 either of those motions?

19 MR. LORY: Certainly, your Honor. Firstly, in order
20 to prove plaintiff's case, all that is necessary is the fact
21 that we show that there was in existence aboard this vehicle
22 at the time of this occurrence a condition that resulted in
23 this particular accident. This condition has been described
24 by Mr. Coppola. It has also been confirmed by Mr. Scotto in
25 that, as the car was being raised from the dock and brought

1 rgrm 111

2 to a position that was approximately five or six feet above
3 the ship's rail, that as Mr. Coppola started to take his
4 strain on his up and down and started to slack off on his
5 Burton in order to carry this car across the dock, that the
6 winch acted erratically in that the up and down could not take
7 up the slack as fast as the Burton let it go to the end that
8 this vehicle swooped across the deck. At this particular
9 point we come to a crossroads, as we do in any case, and
10 that is this, particularly based upon the facts and also
11 common sense.

12 No. 1, either there was, in fact, a mechanical
13 failure or there was, in fact, winchman failure. In any
14 event, this is a question of fact that must be determined by
15 the jury. It is not something that can be ruled upon as a
16 matter of law.

17 With respect to the suggestions as to what we
18 attempted to prove beyond this, we have attempted to give
19 this jury and this Court a plausible reason for the bizarre
20 behavior of this winch, the bizarre movement of this particu-
21 lar draft. We told the Court, and our witness has told the
22 Court that he was not there, so, therefore, he could only
23 rationalize and theorize as to what prompted this erratic
24 behavior. We have presented these particular facts. We have
25 attempted to explain the hydraulic system and its effect upon

the accident to the Court and jury, if for no other reason than to give substance to that which occurred.

Now, with respect to unseaworthiness, I think there is no question. With respect to the issue of negligence, I submit to the Court that that issue is also at present to be decided by the jury.

THE COURT: What is the notice on the negligence issue?

MR. LORY: I don't think notice is essential except for the fact that these winches, except for the time they were turned over to longshoremen for their operation, were and did remain continuously in the control of the vehicle. They maintained them, and if they didn't maintain them and service them properly, then this is something that they knew about or should have known about. Mr. Pitt, the officer, described to us what had to be done with these winches. On his deposition he indicated the fact that there were periods when fluid had to be added. He indicated also that in all hydraulic systems they were subject to leaks and he told us what he did with respect to this. Certainly they are not divorced from the winch system, particularly the winch system at Np. 3 hatch. It is their equipment. They possessed it.

THE COURT: Mr. Lory, let me stop you a minute. Am I correct that before you can go to the jury on the theory

1 rgrm 113

2 of negligence, there has to be some condition perceived by the
3 vehicle that is dangerous and, therefore, there arises a duty
4 which is breached?

5 MR. LORY: True. I don't deny this, Judge.

6 THE COURT: I am not sure that I see here what the
7 duty of the vehicle was that was breached on your negligence
8 theory.

9 MR. LORY: The duty of the vehicle is this: First
10 we must establish that they knew or should have known of the
11 conditions that were present with respect to this winch. We
12 have Mr. Pitt telling us on his deposition that they did
13 experience leakage within this system and what they did.
14 What they did was to add this oil into the system to pump
15 additional oil into the system.

16 THE COURT: I don't believe he said that. I believe
17 he said that as a maintenance matter they bled the air out of
18 the system on every northbound voyage. I do not believe
19 anybody ever said they had a prior condition of this swooping.

20 MR. LORY: No, not the swooping.

21 MR. KAIN: That is correct, your Honor.

22 THE COURT: Nobody ever said that.

23 MR. KAIN: I will submit to your Honor that Mr.
24 Ferenczy himself said there was some seepage this morning.
25 He said it this morning on the stand that there was some

1 rgrm 114

2 seepage in all hydraulic systems.

3 THE COURT: And Mr. Ferenczy said that the mainten-
4 ance that was done as a result of Mr. Coppola's complaint was
5 not one that would have any bearing upon the condition that
6 existed at 7:30 in the afternoon.

7 MR. LORY: If I may just have one moment, please,
8 your Honor.

9 THE COURT: Yes.

10 MR. LORY: I will call the Court's attention to
11 page 58 of the transcript of Mr. Pitt's deposition.

12 THE COURT: Read it to me. I do not seem to have
13 my copy. Go ahead.

14 MR. LORY: (Reading)

15 "Q Any leakage or infiltration of air in either
16 will affect the operation of that particular winch; is
17 that a fair statement?

18 "A Well, it is -- we have never in my four years
19 any chance of any air coming into the main system, only
20 in the remote system we did have air entrapped."

21 THE COURT: Air?

22 MR. LORY: Entrapped.

23 THE COURT: All right.

24 MR. LORY: He adds the fact that in the remote
25 system -- and we were taking a deposition where the witness

1 rgrm 115

2 was aware that we were speaking of the No. 3 hatch and he
3 admitted prior instances of air entrapment.

4 MR. KAIN: I submit to your Honor that there is no
5 testimony here that there was air present in the hydraulic
6 system is unusual or is a condition that should not occur.
7 I think the testimony is just to the contrary. Mr. Ferenczy
8 pointed out to the jury at some length why you had this big
9 gravity feed tank that took care of air in the system.

10 MR. LORY: Mr. Ferenczy took care of the gravity
11 feed tank which took care of air in the main system and did
12 not have anything to do with the remote system. I submit to
13 your Honor that, based upon Mr. Pitt's statement of prior
14 experience of air entrapment in the remote system, that again
15 we have an issue to be determined by this jury; that they had
16 notice that the system was subject to the entrapment of air
17 and this particular condition and with this knowledge these
18 particular winches were turned over to the longshoremen for
19 operation.

20 THE COURT: Are you saying that your notice -- your
21 evidence in this record of notice is limited to what is set
22 forth at page 58 of Mr. Pitt's deposition?

23 MR. LORY: Your Honor, I believe there are other
24 references with respect to their knowledge that there was air
25 in the system. I think there are in the record. Specifically

1 rgrm 116

2 that is the only one I put my finger on in the movement.

3 THE COURT: Doesn't there have to be some point in
4 time -- even assuming that, but some point in time if there
5 is no showing of air in the system in the prior two days that
6 they are working, isn't the existence of air in the system
7 at some earlier time irrelevant?

8 MR. LORY: Your Honor is approaching it on the
9 present existence, or within the time limitation of two days.
10 Our case is predicated upon the fact that the system was
11 prone to the entrapment of air, and I speak of the remote
12 system, and that the ship owner had knowledge of this. At
13 least in theory the accident resulted -- and the reason I
14 say in theory is because we are rationalizing on what was
15 described to us as the behavior of this particular draft.

16 MR. KAIN: If your Honor please, even if we were to
17 assume what Mr. Lory says is true, I submit to your Honor
18 that he has produced no testimony in this case that there is
19 anything wrong with the design of this system or the way it
20 works or the fact that it has to be primed through every two
21 voyages or every five months, as the chief engineer testified.
22 There is no testimony in this record for which the jury can
23 do anything but speculate as to what the meaning was about
24 air entrapment and the necessity to bleed this through during
25 routine maintenance on northbound voyages. There is r

1 rgrm 117

2 testimony that this is an improper system or faulty designed
3 system.

4 THE COURT: As I recall Mr. Ferenczy, he said it was
5 inevitable in this system that this occur.

6 MR. KAIN: That is my recollection.

7 THE COURT: I think I understand this now.

8 Gentlemen, correct me if I am wrong, but on the
9 unseaworthiness condition, Mr. Ferenczy did testify unequivocally
10 that this swooping was caused by air.

11 MR. KAIN: In his opinion, that is right.

12 THE COURT: In his opinion. Regardless of how
13 anyone may feel on the issue of credibility as to Mr.
14 Ferenczy, I think that is an issue that I must send to the
15 jury. The credibility of Mr. Ferenczy is for them to
16 determine. I may say that I think there is substantial
17 question there, given the nature of the cross examination,
18 but I still think that it is a jury question.

19 MR. COHEN: Except I think this, if I may, your
20 Honor, and I should couple my statement, I think, with a
21 motion to strike some part of Mr. Ferenczy's testimony. Mr.
22 Ferenczy admitted that with an air pocket the effect would be
23 to slow down, or make sluggish the operation of the winch. He
24 admitted that without qualification. He went beyond that,
25 though, in talking about the swooping effect. He comes to

1 rgrm 118

2 that conclusion, according to his own testimony, only by
3 assuming that the winch operator thereafter experiencing
4 initially a sluggish response then put the winch further
5 forward ahead to compensate for that sluggish response, and
6 he stated that that was the basis on which he arrived at the
7 swooping motion. Now, there has been no testimony from the
8 winch operator that after getting -- that after activating
9 that winch he kept pushing it further ahead. Indeed, Mr.
10 Coppola's testimony was just to the contrary. He said he
11 started it slowly and it just took off and he pulled it back
12 to neutral. I, therefore, think that I should properly move
13 to strike that part of Mr. Ferenczy's testimony based upon
14 his assumption not contained in the record that Mr. Coppola
15 first activated the winch, found it sluggish and then
16 activated it even further because that is just not what Mr.
17 Coppola said.

18 If your Honor grants that motion to strike that part
19 of Mr. Ferenczy's testimony, which I think your Honor should
20 grant, we are then left with Mr. Ferenczy saying that such an
21 air pocket would have the effect of making the winch sluggish,
22 and if such an air pocket is unseaworthy, it is still the
23 plaintiff's burden to show approximate cause between that and
24 the happening of the accident, and there is no such showing
25 of approximate cause because the effect of it would be to

1 rgrm 119

2 slow down the winch, not accelerate it.

3 THE COURT: Mr. Cohen, what you are saying is that
4 -- and I am assuming your statement at its strongest. You
5 are saying I blew Mr. Ferenczy out of the water and I
6 demonstrated on cross examination that his opinion is com-
7 pletely without cross examination. That is the position you
8 take.

9 MR. COHEN: No, just that portion of the -- that
10 portion of his opinion that speculated that the winch operator,
11 after activating the winch, got a sluggish response
12 initially and then activated it even further. Therefore,
13 by activating it further made it speed up. Now, that was
14 not what Mr. Coppola said, and Mr. Ferenczy --

15 THE COURT: You see, that was not in the hypo-
16 thetical that was put to the witness either on direct
17 examination.

18 MR. COHEN: That is right, but his answer indicated
19 that it was on that basis -- his psychoanalysis, if you will,
20 of what a winch operator would do faced with an initial
21 sluggish response, that he comes to this conclusion of that
22 causing this swooping motion.

23 THE COURT: If I may say, that was one of his
24 answers.

25 MR. COHEN: I think that was the only basis upon

1 rgrm 120

2 which he could arrive at a winch which would be slowed down
3 by an air pocket which would cause this draft to move erra-
4 tically in the fashion it did.

5 THE COURT: There was a discussion of a lag in the
6 return of the pilot valve to the center after having been
7 put in that position. There were a number of things of that
8 kind.

9 MR. COHEN: That was trying to correct it after it
10 started, but in doing the chronology, in order to get the
11 swooping motion to begin, he assumed that Mr. Coppola first
12 got a sluggish response and then activated the winch further
13 forward and that is just not what Mr. Coppola said and the
14 witness had no right to assume it and his theorizing based
15 upon those assumptions which are not in this record and are
16 directly contradicted by Mr. Coppola should be stricken. If
17 we strike that testimony, we are then left with a very simple
18 situation, where Mr. Ferenczy says that an air pocket would
19 cause this winch to act sluggishly, slow down, and there is
20 no proof, then, that that situation caused this accident and
21 I think that is the point we are at. There is no proof in
22 this case -- no competent proof of approximate relationship
23 or approximate cause on either the unseaworthiness or the
24 negligence count.

25 THE COURT: Mr. Cohen, let me say this to you: In

1 rgrm 121

2 stating your position at its strongest, I did not by any
3 means intend to make it an object of humor because I feel that
4 substantial inroads were made in the credibility of this
5 witness on cross examination that the jury could consider as
6 bearing on the validity of his opinion. I nevertheless am
7 concerned that there is enough in the record on the issue of
8 the cause of this to make the credibility of that witness,
9 and therefore the value of his opinion, a jury question.
10 But I will give consideration to it over our weekend. We
11 are recessing, as you know, tonight until Tuesday, so I will
12 give consideration to that. I will reserve decision on both
13 motions Mr. Kain has made which you have endorsed.

14 MR. COHEN: I didn't mean to infer that your Honor
15 was making fun, but I just didn't want my position so over
16 stated that it becomes impossible to defend.

17 THE COURT: I wanted to do it that way for discus-
18 sion, because let us take the situation where an expert gives
19 an opinion that is worthless. The cases are very strong
20 that nevertheless the trial judge may not take the issue from
21 a jury even though he may feel that the expert's testimony
22 is without merit.

23 MR. COHEN: That is right, and your Honor is
24 correct and there is a statement in this record, or two,
25 by Mr. Ferenczy that that air pocket caused the swooping

1 rgrm 122

2 motion.

615

3 THE COURT: Yes.

4 MR. COHEN: However, the key part of what I am
5 arguing now is my motion to strike that portion of Mr.
6 Ferenczy's testimony --

7 THE COURT: What you are saying was one of his
8 underpinnings was this subconscious continuation push.

9 MR. COHEN: That is absolutely right, and that is
10 something Mr. Coppola denied, because he has got his own
11 actions just in reverse, and I say if your Honor should grant
12 my motion to strike that part of Mr. Ferenczy's testimony --
13 and I think that should be stricken -- then we are left with
14 a record which does not contain any proof that this air
15 pocket caused the swooping motion.

16 MR. LORY: May I be heard?

17 THE COURT: Just a minute, Mr. Lory. Short of my
18 reviewing the entire testimony of this expert, I do not know
19 that I could do that even were I willing to strike that part
20 of the testimony. I would have to review it to see whether
21 there were not some bases upon which Mr. Lory is entitled to
22 have the jury consider this opinion. Very frankly, this man
23 had, as I say, a number of explanations for how this could
24 have happened one way or another; that the valve would be
25 slow in coming back or that the air which would be first

1 rgrm 123

2 easily compressed would then be sluggish in moving, or that
3 it could act erratically or that there were vibrations that
4 occurred at one time that did not occur at another time.
5 There were a lot of things like that.

6 MR. COHEN: That is in stopping it, but we are
7 talking about what caused it to initially start that swooping
8 erratic motion.

9 THE COURT: I know that, and without a real review,
10 and as I say I would very hesitant on a complete review, to
11 dismiss on that count, but nevertheless I will reserve
12 decision on both motions.

13 MR. COHEN: I think your Honor understands or
14 appreciates the argument.

15 THE COURT: Yes.

16 MR. LORY: May I say one thing with respect to that,
17 your Honor?

18 THE COURT: Surely.

19 MR. LORY: It had been my understanding that when
20 Mr. Ferenczy was testifying, and before the movement and within
21 the system and everything else was broken down into small
22 segments, that he assumed that there was, as there would have
23 to be here, a continuous motion of this lever until such time
24 as you saw a response at the hook, because there are no
25 points; there is nothing there to indicate how far you are

1 rgrm 124

2 going. It has been established here rather clearly that the
3 winch operator would look at the draft. When he saw a result
4 there -- now, with the cross examination counsel attempted
5 to break this down into segments and all the witness was
6 saying at that particular point was the fact that as it moved
7 further this would happen; as the lever progressed in its
8 course this would happen. Now, Mr. Cohen misconstrues this
9 to break it out or break it down, and I also missed the point
10 when your Honor first ruled upon it, was the fact that there
11 was an additional motion. It was not an additional motion.
12 It was a continuous motion with an effort to explain that
13 which would happen as this particular handle traveled along
14 its course. The fact that as he pushed it so far there
15 would still be no visible sign so it continued to travel.

16 THE COURT: Well, as I remember the testimony, this
17 car had started across from the Burton; it had started
18 across. It had gone over the rail. Now, let us assume that
19 this is the rail of the vessel. That car has got to be 10, 15,
20 20 feet out there and it has got to come 10, 15, 20 feet
21 across. It was coming across slowly and it was at this point
22 with the controls being operated very slowly that all of a
23 sudden it ran away. So I do not think we are in a position
24 where Mr. Coppola starts and keeps on pushing the thing. He
25 had it in his operation and all of a sudden, according to

1 rgrm 125

2 him, it ran away from him.

3 MR. LORY: That wasn't my understanding of the
4 testimony.

5 THE COURT: That was my understanding.

6 MR. LORY: He took a strain on the up and down and
7 he started to slack off at which point the Burton ran away.
8 Therefore, the Burton is now traveling from the raised
9 position through the neutral to the lowering position.

10 THE COURT: I know, but that is where I am not sure
11 I agree with you, because as I understood it, the car was
12 already moving onto the boat and, therefore, he was in the
13 process of having his controls, in a picking up of one and
14 a letting off of the other. They were in a more or less
15 fixed position because this thing was moving, one was doing
16 like this.

17 MR. LORY: That wasn't my recollection.

18 THE COURT: That is my recollection of the testimony
19 and it is at that point he says he put the Burton in neutral
20 and he pulled the other one back all the way to hoist it and
21 that is when it happened. But as I say, I am concerned
22 that there is enough in Mr. Ferency's opinion to require
23 submission to the jury.

24 Did you gentlemen order a copy of his testimony?

25 MR. KAIN: We ordered a copy only of the direct and

1 rgrm 126

2 I was hoping to have it long before now. We ordered just the
3 direct on a daily basis.

4 THE COURT: I am concerned -- let me give you my
5 feelings. I feel that I probably would have to submit the
6 unseaworthiness issue. I feel there is substantial merit in
7 the motion to dismiss on the grounds of negligence and I
8 will give consideration to that over the weekend.

9 All right, Mr. Kain, let's take a recess here and
10 you can organize your forces. I take it, so I have some
11 idea where we are at, you are going to be another day and a
12 half here?

13 MR. KAIN: I hoped to finish this afternoon. I
14 intend to put on a hydraulic expert. I have then one more
15 fact witness who should -- I mean one more expert witness
16 who should be brief and my factual testimony is all by
17 deposition, but I am endeavoring not to read all three depo-
18 sitions at one time. I would like to break them up, if I may.

19 THE COURT: So you might be through by Tuesday
20 during the morning.

21 MR. KAIN: I might be through sometime Tuesday, yes.

22 MR. COHEN: If your Honor please, Mr. Andre, who I
23 subpoenaed the other day and who your Honor directed to come
24 back today as I understand is, is still in the witness room.
25 He will be my first witness. I don't think we will reach

1 rgrm 127

2 him, then, until Tuesday. Could I ask your Honor to order
3 him back Tuesday?

4 THE COURT: Absolutely. Please do. Let's bring
5 him in right now and let him off.

6 Off the record.

7 (Discussion off the record.)

8 THE COURT: Sir, we have been keeping you here and
9 unfortunately we are not going to reach you today. We are
10 going to let you go until Tuesday. When would you like this
11 gentlemen Tuesday, at 2 o'clock?

12 MR. COHEN: That will be fine.

13 THE COURT: Can you return Tuesday at 2 o'clock?

14 MR. ANDRE: Yes.

15 THE COURT: All right, it is my direction that you
16 be here Tuesday at 2 o'clock.

17 THE COURT: Let's take a brief recess here.

18 (Recess)

19 THE COURT: Ladies and gentlemen, the plaintiff
20 having concluded his case on the case in chief, we will now
21 turn to proof on behalf of the vessel, Mr. Kain.

22 MR. KAIN: Mr. Napolitano.

23 P . E D W A R D N A P O L I T A N O , called as a
24 witness, having first been duly sworn, testified as
25 follows:

1 DIRECT EXAMINATION

2 BY MR. KAIN:

3 Q Mr. Napolitano, would you tell his Honor and the
4 ladies and gentlemen of the jury what your present occupation
5 is.
6

7 A I am presently employed by John J. MacMullan
8 Associates. They are naval architects, marine engineers, as
9 the chief hydraulics engineer. My present duties are the
10 design, development and actually having built a fin
11 stabilizing system for ships to stabilize ships against roll.
12 I am in the ships motions division.

13 Q Would you tell his Honor and the ladies and gentle-
14 men of the jury your educational and engineering background.

15 A Well, I have a degree from New York University in
16 civil engineering. My engineering background has been in all
17 the fields, namely mechanical, hydraulic, structural and
18 electrical. Starting from way back when I first started to
19 work, I worked for the Brooklyn Edison Company before it
20 became Consolidated Company as just an electrical draftsman.
21 From there I went to the Aluminum Company of America in the
22 mechanical end of engineering. From there I went to
23 Remington Rand, and again it was mechanical, in the design of
24 calculators. This is before the computer era. From
25 Remington Rand I went down to the Panama Canal and I was

1 there for three years. That is where I got my first
2 professional introduction to hydraulics, in the Canal, the
3 stream flows and hydraulic equipment for the operation of the
4 Canal itself. Then I had construction experience, which has
5 nothing to do with the present problem. Then I went into my
6 own business. I had a small manufacturing shop known as
7 Penco Hydraulics. They happen to be the initials of my name,
8 Pen Company. In that, of course, my main work was that of
9 design and manufacture of hydraulic components. It was in
10 response to requirements -- specification requirements wherein
11 I conceived, designed and made the parts for the various
12 companies, mostly for Greer Hydraulics.
13

14 Then I sold my shop to Hudson Engineering Company,
15 and as a matter of fact it is still operating as Penco
16 Division of Hudson Engineering Company, where I did further
17 work -- I developed certain items which have been patented and
18 I do now presently own 14 patents in hydraulic components
19 and hydraulic systems.

20 Then from Hudson Engineering Company, which is also
21 owned by John J. MacMullan anyway, I came to the design
22 office because of this problem of designing a stabilizing
23 system hydraulically. They do exist, of course.

24 THE COURT: Can you all hear the witness, ladies
25 and gentlemen? Good. I just wanted to make sure you do.

They must all hear you, sir.

A It is practically complete. My problem has been to change a fin stabilizing system from a mechanical electro-mechanical to hydraulics which responds to electronic signals and converts these signals to very high torque hydraulic movements.

Q Did you, Mr. Napolitano, at my request go on board the South African Huguenot?

A Yes, I did.

Q How many times did you go on board this vessel?

A Well, once at your request and once at my own request.

Q For what purposes did you go on board the vessel?

A To examine the hydraulic system, the hydraulic winch system which is here in question.

Q That is the forward winches at the No. 3 hatch of the South African Huguenot?

A That is correct.

MR. KAIN: I wonder, if I may, your Honor, with the consent of counsel, put these photographs which I have in evidence. They have all been identified by the vessel's third officer. If there is no objection -- rather than put them in individually and refer back to Mr. Gous' testimony, if there is no objection to them, I would like to put them in.

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Napolitano-direct

2 THE COURT: Mr. Lory?

3 MR. LORY: May I see what you are offering, Mr.

4 Kain?

5 MR. KAIN: Yes.

6 MR. LORY: Okay.

xx 7 (Defendant's Exhibit F received in evidence.)

8 MR. LORY: I would just like one thing on the
9 record, your Honor, a statement from counsel as to when these
10 pictures were taken as to date.

11 MR. KAIN: For the record --

12 MR. LORY: For the record, please.

13 MR. KAIN: May I let my assistant look for the dates
14 on these, your Honor, while I continue?

15 THE COURT: Surely.

16 Mr. Lory, is it sufficient if we have how many
17 months later or something of that nature?

18 MR. LORY: Just a general --

19 MR. KAIN: They are a considerable period of time
20 later, your Honor. They are nowhere near the date of this
21 accident, if that is what Mr. Lory is trying to establish.

22 THE COURT: Is that what you want?

23 MR. LORY: Yes.

24 THE COURT: All right, then we do not need it.

25

1 rgrm 132

Napolitano-direct

2 BY MR. KAIN:

3 Q Did you also at my request review the instruction
4 manual for these particular winches?

5 A Yes, I did.

6 Q And did you look at the final drawings for these
7 winches, which is --

8 MR. KAIN: May I mark this for identification, then,
9 your Honor?

10 THE COURT: You may.

xx 11 (Defendant's Exhibit G marked for
12 identification.)

13 Q Did you also, then, Mr. Napolitano, look at these
14 final drawings which are Defendant's Exhibit G for identifi-
15 cation?

16 A Yes, sir, I did.

17 Q Now, Mr. Napolitano, would you look at this drawing
18 which is before you, this blackboard drawing, and I direct
19 your attention specifically to the upper right hand corner.
20 Will you assume with me that that circular figure with the
21 line running down from it was described by Mr. Ferenczy,
22 plaintiff's expert, as a balancing tank, or feed gravity
23 tank for the main winches, or the main winch motor, for the
24 winches at the forward end of the No. 3 hatch, and will you
25 then, sir, look at this photograph, which is Defendant's

1 rgrm

Napolitano-direct

2 Exhibit C in evidence, and I direct your attention specifically
3 to the upper right hand corner. Would you tell me, does that
4 balancing tank appear in that photograph?

5 A Yes. It is this rectangular tank at the top of
6 the boom.

7 Q Would you place a "T" using this pencil on that tank,
8 the one that you have just referred to.

9 Now, will you also, Mr. Napolitano, look at this
10 photograph, which is Defendant's Exhibit F in evidence and
11 tell me, if you can, what that is a picture of.

12 A From my recollection of my visit to the pump room,
13 this is the fill valve -- fill line for that particular tank
14 that I just marked.

15 Q Does it have a handle or a pump of some kind in that
16 photograph?

17 A Yes, it has.

18 Q What is its purpose, the purpose of the pump handle?

19 A It is to open the line to make the oil flow in one
20 direction or the other, as the case may be.

21 Q Could you tell me what the purpose of the gravity
22 feed tank is?

23 A Yes.

24 Q Or balancing tank, if you would?

25 A Well, gravity feed, expansion tank, balancing tank,

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1 it has all these names, but its function is to replenish
2 whatever oil may be lost from the lines. The pump and motor
3 is the closed loop, or closed circuit, so that the pump is
4 pumping oil through a line, either through a bypass and back
5 to itself, or through motors, if the proper valves are
6 actuated and back to itself again, but all pumps actually
7 designed so have leakage, and the reason for the leakage is,
8 one, where you have moving parts you have got to have clearances
9 and if you have clearances then you are going to have oil
10 leak through, especially under pressure. That being the case
11 there is advantage taken of it by actually controlling the
12 spaces or the clearances that you have between moving parts
13 and controlling the amount of oil that goes through. This
14 acts as two things: One, it acts as a lubricant for the
15 piece of machinery itself and, two, it is called case drain.
16 It actually takes away heat from the operation of the piece
17 of equipment. So as this oil is leaked from the system it has
18 to be made up by another source. For this source you have
19 a tank on top of the boom here, or wherever, at a high point
20 so that it can replenish whatever oil is lost through leakage.

22 Q Does this tank serve any function with respect to
23 keeping air out of the hydraulic system, this closed hydraulic
24 system for these cargo winches that you referred to?

25 A Yes, it being --

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2 MR. LORY: Objection, your Honor. May we have which
3 system we are referring to?

4 MR. KAIN: I said the closed hydraulic system for
5 the cargo winches.

6 THE COURT: The cargo winches.

7 MR. LORY: That is the main system, Mr. Kain?

8 MR. KAIN: The main system, if you will.

9 A Yes. It being the highest point in the system the
10 air would collect in the line that leads to that high point
11 and it would bleed the air from the main closed loop.

12 Q Incidentally, Mr. Napolitano, do the terms "slave
13 system" and "master system" have any meaning to you as an
14 engineer?

15 A Yes.

16 Q Would you tell me what a "slave system" is and
17 what a "master system" is?

18 A Well, as the term implies, you have the so-called
19 transmitter, or the system that gives the signal. That would
20 be the master. Then you have at the other end the system
21 that receives the signal and must respond, and because it must
22 respond it is called a slave system.

23 Q Specifically, with reference to the cargo winches
24 at the forward end of the No. 3 hatch of the Huguenot, would
25 this transmitter or remot system that we have been talking

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2 about while you have been sitting in the courtroom here, would
3 that be the master system?

4 A Yes.

5 Q And the main cargo winch, that is the hydraulic
6 motor and cargo winch, would that be the slave system?

7 A The control of that would be the slave system, yes.

8 Q Now, could you tell me, again with specific reference
9 to the cargo winches at the forward end of the No. 3 hatch,
10 is there any direct connection, or is there gearing between
11 the hydraulic motor and the cargo winch? I am referring to
12 the South African Huguenot, of course.

13 A I am sorry, I lost you. Could you repeat that,
14 please?

15 Q These cargo winches at the forward end of the No. 3
16 hatch on the Huguenot, were they connected? In other words,
17 was the hydraulic motor connected to the winch by means of
18 gearing or was it directly connected to the cargo winch?

19 A No. It is a direct shaft and drive. It is a direct
20 connection from the drive to the motor.

21 Q With no gearing inbetween?

22 A No gearing inbetween.

23 Q Mr. Napolitano, I show you these two photographs
24 which are Defendant's Exhibits A and B.

25 Can you tell me, using them together, what do they

1 rgrm 137

2 represent?

3 A B represents the stantions on which the master part
4 of the controls are fixed.

5 Q That is the --

6 A Transmitter.

7 Q The remote system, the transmitter, and the main
8 system?

9 A Yes. And the lower part of the picture represents
10 the same thing, just an enlarged view.

11 Q Could you tell me based on your investigations
12 aboard the South African Huguenot and on your study of the
13 equipment itself and the instruction manual, is there any oil
14 reservoir or hydraulic fluid reservoir on that equipment?

15 A Yes, there is, at the head of this stantion. At
16 the very top, that semi-circular box, the internal of it is
17 an reservoir.

18 Q Does that reservoir, if you will, of the hydraulic
19 fluid serve any function in connection with air in the system
20 or a lack of air in the system?

21 A The reservoir itself would keep out air from the
22 system because it would be filled with oil and oil can only
23 get into the ram actuator through some check valves. They are
24 non-return valves. They operate in one direction only.
25 However, the air which might get into a line, assuming that

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Napolitano-direct

2 it did, you have -- any and all hydraulic systems have high
3 points in the systems at which there is a bleed point or
4 bleed valve.

5 Q Does this particular system have a bleed valve? I am
6 referring now to the system aboard the South African Huguenot.

7 A Yes, it does. It is not shown on these drawings --
8 these photographs.

9 Q But there is such a bleed valve in the system; is
10 that correct?

11 A Yes, there is an individual bleed valve for each
12 of the lines, one for the up, or hoist, one for the down, or
13 lower, and one for the foot brake, each of which is a
14 separate hydraulic line.

15 Q With respect to this foot brake as depicted in that
16 photograph, when you went on board the vessel, could you
17 tell us what type of a brake that is, the foot brake?

18 A Well, it is just a foot treadle, but it is linked
19 to a hydraulic piston inside the stantion which transmitted
20 hydraulic fluid, or power, to another piston on the opposite
21 side, and this hydraulic piston at the other end of it
22 presses down onto a similar treadle which operates the drum
23 band -- the brake band around the drum.

24 Q And a brake band around the drum is a mechanical
25 brake, is it, sir, as opposed to a hydraulic brake?

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A Yes, it is a strip around a wheel and as you tighten it it will grip the wheel and keep it from rotating.

Q This foot brake system, is it independent of the transmitter system which we have depicted on the other side of the board there?

A Yes, it is. It is the same position and the components of it are within the same stantion, but it is an entirely independent system.

Q While you were on board the South African Huguenot, about how long ago was that, do you recall?

A The last time might have been about eight months ago.

Q Before that you were on it when, sir?

A That I don't recall.

Q Well, in any event, on the two occasions when you were on board this vessel, did you examine this equipment at the forward end of the No. 3 hatch?

A Yes, I did.

MR. LORY: Excuse me, Mr. Kain, may we have an answer of when he was first aboard? I think it is germane at this time with respect to this testimony.

THE COURT: Do you have a recollection of the month or the year?

THE WITNESS: This is a very rough recollection of somewheres of about between 12 and 14 months.

1 THE COURT: After the incident?

2 THE WITNESS: No, from today. Between 12 and 14
3 months ago.

4 THE COURT: And the first time?

5 THE WITNESS: That was the first time. The second
6 time was approximately eight months ago.

7 Q I believe the second time was in August of last
8 year, was it not?

9 A Probably. Something like that.

10 Q On the two occasions when you were on board and you
11 examined this equipment and I am referring now to the upper
12 handle on the transmitter or master system. On the two
13 occasions when you were on board, was that handle spring
14 loaded?

15 A Yes, it was.

16 Q On the occasions when you were on board, if you
17 moved that handle either to the hoist or lowering position,
18 if you took your hand off it, would the handle return to the
19 upright or stop position?

20 A Yes, it would return to neutral.

21 Q How about with respect to the control lever for the
22 winch itself?

23 A It did the same thing.

24 Q Was that spring loaded?